

FINAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Sections 40-107.14 through .143

Specific Purpose:

Section 40-107.14 is amended to specify that an applicant, recipient, or former recipient must be informed of their time on aid as specified in new Sections 40-107.141, .142, and .143.

Section 40-107.141 is adopted to specify that at the time that eligibility for aid is authorized, the county must inform the applicant, by notice of action, of the number of countable months that the recipient received aid, the specific months that were exempt from the time limit, and the remaining number of months that the recipient may be eligible to receive aid.

Section 40-107.142 is adopted to specify that at redetermination, and at the 54<sup>th</sup> and 58<sup>th</sup> countable months on aid, the county must inform the recipient, by notice of action, of the number of countable months that the recipient received aid as reported on the most recent notice of action, the cumulative number of countable months that the recipient received aid and the specific exempt months since the last notice of action, and the remaining number of months that the recipient may be eligible to receive aid. This section also adds a cross-reference to Section 42-302.2 for the definition of countable months.

Section 40-107.143 is adopted to specify that the county must inform a current or former recipient, in writing, within 30 calendar days from the date of the recipient's request, of the number of countable months that the recipient received aid, the specific months that were exempt from the time limit, and the remaining number of months that the recipient may be eligible to receive aid.

Factual Basis:

Welfare and Institutions Code Section 11454(b) establishes the CalWORKs 60-month time limit requirement. The amendment to Section 40-107.14 and the adoption of Sections 40-107.141, 40-107.142 and 40-107.143 are necessary to ensure that recipients are informed on a timely basis of the number of months they have received aid and the process, as provided in Section 42-302.3, which allows them to claim the exemptions set forth in Welfare and Institutions Code Sections 11454(e) and 11454.5(b). This information is important to ensure that recipients know of the approach of their time limits to prepare for the resulting grant reduction, and to ensure recipients are provided exemptions to which they are entitled.

### Final Modifications

In response to public comments received, Section 40-107.14 is being amended to clarify that a description of the 60-month time limit requirements shall be provided at the time an individual applies for aid, at the time a recipient's eligibility for aid is redetermined, and any other time a notice of action establishing time on aid is provided.

### Section 40-107.141

#### Final Modifications

In response to public comments received, Section 40-107.141 is being amended to clarify that the applicant will receive notification of the number of months that aid was received only if the applicant received aid in California or other states on or after January 1, 1998. This section is also being amended to clarify that the individual will be informed of the number of months reported on the most recent notice of action, if any.

The word "recipient" has been replaced with the word "individual" as it refers to the applicant.

### New Sections 40-107.141(a) through (c)

#### Final Modifications

In response to public comments received, Sections 40-107.141(a) through (c) are being adopted to specify that the notice shall include a) the number of months the individual received aid as reported on the most recent notice of action, if any, b) the cumulative number of countable months that the individual received aid and the specific exempt months since the last notice action, or the beginning of aid if there has been no prior notice of action, and c) the remaining number of months that the individual may be eligible to receive aid.

### Section 40-107.142

#### Final Modifications

In response to public comments received, Section 40-107.142 is being amended to delete "the 54<sup>th</sup> and 58<sup>th</sup> countable months on aid" since Sections 40-107.143 and 40-107.144 have been added to address the times when a recipient shall be informed by notice of action. Sections 40-107.142(a), (b) and (c) are being deleted. A cross-reference to MPP Section 40-107.141 is being included to specify the required information that shall be included in the notice of action.

### New Section 40-107.143 et seq.

### Post Hearing Modifications

### Specific Purpose

Section 40-107.143 is being adopted in response to public comments received.

### Factual Basis

Welfare and Institutions Code Section 11454(b) establishes the CalWORKs 60-month time limit requirement. The adoption of new Section 40-107.143 is necessary to ensure that recipients are informed at the 54<sup>th</sup> month on aid so they know of the approach of their time limits to prepare for the resulting grant reduction, and to ensure they are provided exemptions to which they are entitled. This section allows counties to choose the most appropriate notice to inform the recipient, which will therefore assist counties in providing timely determinations of recipients' time on aid and the exemptions/exceptions as set forth in Welfare and Institutions Code Sections 11454(e) and 11454.5(b). This section specifies that at the 54<sup>th</sup> countable month on aid, the county must inform the recipient, by using one of two methods: 1) a notice of action that meets the requirements in Section 40-107.142, or 2) a notice that informs the recipient of the cumulative number of countable months that the recipient received aid and the remaining number of months that the recipient may be eligible to receive aid. This section also adds a cross-reference to Section 42-302.2 for the definition of countable months.

### 15-Day Renote Final Modifications

#### New Section 40-107.143(a)

This section is amended to change the cross-reference from Section 42-107.141 to Section 40-107.141.

#### New Section 40-107.144 et seq.

### Post Hearing Modifications

#### Specific Purpose:

Section 40-107.144 is being adopted in response to public comments received.

#### Factual Basis:

Welfare and Institutions Code Sections 11454(e) and 11454.5(b) sets forth the requirement that recipients be provided timely determinations of time on aid and be informed of any exemptions/exceptions. Section 40-107.144 assists counties in complying with these provisions by allowing counties to choose the most appropriate time to inform the recipient. Counties are to provide a notice of action informing each recipient of the number of months of aid that was received in one month during the period of the recipient's 54<sup>th</sup> through 58<sup>th</sup> countable months on aid. This section clarifies that no further notice of action must be sent until six exempt months have passed since the prior notice of

action. Adopting this section is necessary to ensure that recipients are informed by a notice of action prior to the 60<sup>th</sup> month on aid so they know of the approach of their time limits to prepare for the resulting grant reduction, and to ensure they are provided exemptions to which they are entitled.

#### New Section 40-107.145 et seq.

##### Post Hearing Modifications

##### Specific Purpose:

Section 40-107.145 is being adopted in response to public comments received.

##### Factual Basis:

This section assists counties in providing timely and accurate determinations of recipient's time on aid by limiting the number of excessive notices. Adopting this section is necessary to limit the repeated notices of action to be sent when a recipient's time on aid is adjusted due to exempt or unaided months and to avoid further notices of action being sent under certain circumstances that include: 1) within three calendar months from a previous notice of action, and 2) once an exemption for individuals who are 60 years of age or older is established.

#### Section 40-107.146 - renumbered from 40-107.144

##### Final Modifications

This section is being renumbered from Section 40-107.144 to maintain a consistent numerical sequence due to the adoption of new Sections 40-107.143 through .145.

In response to public comments received, this section is also being amended to clarify that 1) the county shall document the recipient's request for time limit information and provide the recipient with a written notice indicating the number of months that aid was received, and 2) to clarify that the recipient's request can be verbal or in writing.

#### Section 40-107.146(b) - renumbered from 40-107.143(b)

##### Final Modifications

This section is being renumbered from Section 40-107.143(b) to maintain a consistent numerical sequence due to the adoption of new Sections 40-107.143 through .145. This section is also being amended to add a cross-reference to MPP Sections 40-107.143(a) and 40-107.144.

#### New Section 40-107.147 et seq.

##### Post Hearing Modifications

Specific Purpose:

Section 40-107.147 is being adopted in response to public comments received.

Factual Basis:

This section ensures that recipients are informed of either the resulting grant reduction or the continuance of aid based upon the exceptions set forth in Welfare and Institutions Code Section 11454(e). This section provides instruction to counties to send a notice of action to a recipient to inform her/him of the 60 months of aid that was received at the 60<sup>th</sup> month on aid. This notification shall also inform the recipient of either the reduction of the grant amount due to the expiration of the 60-month time limit or that aid will be continued based upon the criteria for exceptions, provided in MPP Section 42-302.11. Adopting this section ensures that recipients are informed by a notice of action at the 60<sup>th</sup> month on aid so they are aware that the 60-month time limit has expired.

New Section 40-107.148

Post Hearing Modifications

Specific Purpose:

Section 40-107.148 is being adopted in response to public comments received.

Factual Basis:

Adopting this section ensures that adults, who have reached their 60-month time limit and whose children remain aided, continue to receive notification of their time on aid at redetermination, including the exempt months entitled to the recipient when child support recoupment reimburses a month of aid as set forth in Welfare and Institutions Code Sections 11454.5(b) (3). This section instructs counties to inform an adult who has reached the CalWORKs 60-month time limit and whose children remain on aid, by notice of action, at redetermination of aid when child support or overpayment recoupment reimburses a month of aid. This section also cross-references Section 42-302.21(g) for clarification of reimbursement of aid through child support recoupment and Section 42-302.2 for clarification of reimbursement of aid for overpayment months.

New Section 40-107.149

Post Hearing Modifications

Specific Purpose:

Section 40-107.149 is being adopted in response to public comments received.

Factual Basis:

Adopting this section clarifies that adults, who have reached the CalWORKs 60-month time limit and whose children are no longer aided, continue to receive notification of their time on aid at application and upon request. This section specifies that counties inform an adult, who has reached the CalWORKs 60-month time limit and whose children are no longer aided, of the number of months of aid that have accrued, at application and upon request, as provided in Sections 40-107.141 and 40-107.146.

Sections 40-107.15 and 40-107.151

Specific Purpose:

Section 40-107.15 is adopted to specify that when another state requests the number of months of TANF assistance received by a former CalWORKs recipient provided by the Temporary Assistance to Needy Families (TANF) Program, the county where the aid was last received must promptly respond to the other state's request.

Section 40-107.151 is adopted to specify that the county must inform the former CalWORKs recipient, by notice of action, of the number of months of TANF-funded assistance that was provided to the other state.

Factual Basis:

The adoption of Section 40-107.15 is necessary to clarify that any request by another state for the number of months of TANF assistance received by a former CalWORKs recipient is answered by the county where the aid was last received. The adoption of Section 40-107.151 is necessary to ensure that former recipients are informed of the number of months that they have received TANF assistance. These sections are necessary to comply with the federal TANF 60-month time limit requirement set forth in Section 608(a)(7) of Title 42 of the United States Code.

Handbook Section 40-107.152

Specific Purpose:

This Handbook section is added to provide guidance to counties for reporting months of assistance provided by TANF funds. This Handbook section specifies the state-only programs that are not subject to the federal TANF 60-month time limit.

Factual Basis:

The addition of this Handbook section is necessary to comply with the federal TANF 60-month time limit requirement set forth in Section 608(a)(7) of Title 42 of the United States Code.

New Handbook Section 40-107.153

Post Hearing Modifications

Specific Purpose:

New Handbook Section 40-107.153 is being adopted in response to public comments received.

Factual Basis:

The addition of Handbook Section 40-107.153 is necessary to comply with the federal TANF 60-month time limit requirement set forth in Section 608(a)(7) of Title 42 of the United States Code to provide guidance to counties to report only the months of assistance provided by TANF funds. The months that are exempt from the federal TANF 60-month time limit and months that are excluded from the federal definition of assistance and federal regulations shall not be reported to the other state.

Sections 40-107.15 through .18

Specific Purpose:

The specific purpose is to renumber Section 40-107.15 as Section 40-107.16; renumber Section 40-107.16 as Section 40-107.17; renumber existing Section 40-107.17 as Section 40-107.18; and renumber existing Section 40-107.18 as Section 40-107.19.

Factual Basis:

Renumbering these sections is necessary to maintain a consistent numerical sequence due to the adoption of new Section 40-107.15.

Section 42-301.2

Specific Purpose:

This section is amended to repeal references to ineligibility based on the 18- and 24-month time limits and to add a cross-reference to new Sections 44-133.8 and 82.833.1.

Factual Basis:

The amendment to repeal the reference to the 18/24-month time limit is necessary to clarify the application of this time limit. Recipients who reach the 18/24-month time limit can remain eligible for aid if they fulfill their work requirement by participating in activities allowed after the time limit, including community service and unsubsidized employment. Recipients who fail to fulfill their work requirement are subject to sanction.

The cross-reference to new Sections 44-133.8 and 82-833.1 is necessary to refer the reader to the new regulations that specify how safety net benefits are calculated.

Section 42-302.11

Post Hearing Modifications

Specific Purpose:

Section 42-302.11 is being amended in response to public comments received.

Factual Basis:

When an individual has been aided as an adult for 60 months, additional months of aid may be provided to that adult when all parents, aided stepparents, and/or caretaker relatives residing in the home of the aided child(ren) meet any of the exception criteria, which can occur not only at the point the adult reaches the 60<sup>th</sup> month on aid but any time thereafter. This section, as amended, clarifies this criteria.

Sections 42-302.114 and 42-302.114(a) through (c)

Specific Purpose:

This entire section is adopted to provide guidance to County Welfare Departments (CWDs) by providing criteria to be used to determine if a recipient is eligible for the exception that extends aid beyond the 60-month time limit for individuals who have a history of participation and cooperation with welfare-to-work requirements but who are found to be unable to maintain employment or to participate in welfare-to-work activities. In addition, this section provides timeframes for a periodic review of the impairment or condition that prevents an individual from maintaining employment or participation in welfare-to-work activities.

Factual Basis:

This entire section is necessary to clarify statutory language and provide guidance to counties regarding the criteria to be used in determining that an individual is eligible for the 60-month time limit exception as set forth in Welfare and Institutions Code Section



11454(e)(5). Section 42-302.114(c) is necessary to provide CWDs with timeframes within which the county must determine an individual's continuing eligibility for an exception to the 60-month time limit based upon a periodic review of the impairment or condition that prevents employment or participation in welfare-to-work activities.

#### Final Modifications

In response to public comments received, Section 42-302.114 is being amended to remove the phrase "upon reaching the 60-month time limit". Section 42-302.11 already specifies when an extension of the time limit may be granted and removal of this phrase eliminates redundant language and any potential confusion.

#### Section 42-302.114(a)

#### Final Modifications

In response to public comments received, Section 42-302.114(a) is being amended to clarify that if the criteria in either Section 42-302.114(a)(1) or (a)(2) are met, a participant shall be found to have a history of participation and full cooperation.

#### Section 42-302.114(a)(2)

#### Final Modifications

In response to public comments received, Section 42-302.114(a)(2) is being amended to delete the phrase "to the best of his/her ability", delete the term "significant", and delete the reference to Section 42-712.442. These amendments are necessary to improve clarity and ensure that the term "impairment" as used in this regulation is not confused with the impairment standard that is used to determine exemptions under Section 42-712.

#### Section 42-302.114(a)(2)(A)

#### Final Modifications

In response to public comments received, Section 42-302.114(a)(2)(A) is being amended to delete the term "equal" and replace it with the word "total". This amendment is necessary to clarify that the six months of participation is a cumulative total.

#### Section 42-302.114(a)(2)(B)

#### Final Modifications

In response to public comments received, Section 42-302.114(a)(2)(B) is being amended to 1) delete the term "significant", delete the phrase "does not meet", and adopt the phrase "it

meets". These amendments are necessary to ensure consistency with Section 42-302.114(a)(2).

#### Section 42-302.114(b)(1)

##### Final Modifications

In response to public comments received, Section 42-302.114(b)(1) is being amended to remove reference to a modification of an individual's hours of participation. This amendment eliminates a potential conflict between this regulation and the exemption provisions under Section 42-712.4. The cross-reference has been amended to ensure consistency with the renumbering of other regulation sections.

#### Section 42-302.114(b)(1)(A) and Handbook

##### Final Modifications

In response to public comments received, Section 42-302.114(b)(1)(A) is being adopted to clarify and define full participation. The Handbook is being adopted to provide an example for county reference.

#### Section 42-302.114(b)(2)

##### Final Modifications

In response to public comments received, Section 42-302.114(b)(2) is being amended to clarify that if the criteria in Sections 42-302.114(b)(2)(A), 42-302.114(b)(2)(B), or 42-302.114(b)(2)(C) are met the individual shall be considered incapable of maintaining employment or participation in welfare-to-work.

#### Section 42-302.114(b)(2)(A)

##### Final Modifications

In response to public comments received, Section 42-302.114(b)(2)(A) is being amended to ensure clarity.

#### Section 42-302.114(b)(2)(B)

##### Final Modifications

Section 42-302.114(b)(2)(B) is being deleted. Regulations previously added by this emergency filing and/or existing regulations adequately address situations in which an individual's past problems and/or failures to progress in her/his welfare-to-work

assignment indicate that the individual is incapable of maintaining employment or welfare-to-work participation.

Section 42-302.114(b)(2)(C) - now renumbered as Section 42-302.114.(b)(2)(B)

Final Modifications

Section 42-302.114(b)(2)(C) has been renumbered to Section 42-302.114(b)(2)(B) to ensure numerical consistency due to the deletion of previous Section 42-302.114(b)(2)(B). In response to public comments received, this section is being amended to delete the reference to a modification of the hours of participation and to correct the language tense. These amendments eliminate potential conflict/confusion with existing exemption provisions under Section 42-712.4 and provides consistency with amendments made to Section 42-302.114(b)(1).

New Section 42-302.114(b)(2)(B)1.

Post hearing Modifications

Specific Purpose:

Section 42-302.114(b)(2)(B)1. is being adopted in response to public comments received.

Factual Basis:

This new section is necessary to clarify and define modification of welfare-to-work activities.

Section 42-302.114(b)(2)(D) - now renumbered as Section 42-302.114.(b)(2)(C)

Final Modifications

Section 42-302.114(b)(2)(D) has been renumbered to Section 42-302.114(b)(2)(C) to ensure numerical consistency due to the deletion of previous Section 42-302.114(b)(2)(B). In response to public comments received this section is being amended to clarify that labor market considerations are based on a lack of employers that can accommodate an individual with an impairment rather than a limited availability of jobs/employers.

Section 42-302.114(c)

Final Modifications

In response to public comments received, this section is being amended to 1) delete the word “impairment”, 2) adopt the word “disability”, and 3) to include consideration of an individual’s employment in reevaluating a learning disabled individual’s ability to maintain employment or welfare-to-work participation.

## New Section 42-302.2

### Post Hearing Modifications

#### Specific Purpose:

Section 42-302.2 is being amended in response to public comments received.

#### Factual Basis:

An entire month of aid in which the recipient was not entitled to cash aid, that is fully repaid, shall not count for the purposes of the 60-month time limit. This section clarifies that criteria.

## Section 42-302.21(g)

### Final Modifications

In response to public comments received, this section is being amended to delete the requirement to credit an individual's CalWORKs 60-month time limit with the months of aid that were fully reimbursed in another state as a result of child support collection, an accurate application of the exemption as set forth in Welfare and Institutions Code Section 11454.5 (b) (3).

## Section 42-302.21(g)(1)

### Final Modifications

In response to public comments received, this entire section is being deleted.

## New Sections 42-302.21(g)(1) and 42-302.21(g)(1)(A) through (G)

### Post Hearing Modifications

#### Specific Purpose:

Sections 42-302.21(g)(1) and 42-302.21(g)(1)(A) through (G) are being adopted in response to public comments received,

Factual Basis:

Welfare and Institutions Code Section 11454.5 (b) (3), provides an exemption to the CalWORKs 60-month time limit when the cost of aid for the month(s) is reimbursed by child support collection. These sections clarify and comply with the process for reimbursement of aid to exempt months of aid through child support collection.

15-Day Renote Final Modifications

Section 42-302.21(g)(1)(C)

This section is amended to add the word "aided" as this was inadvertently missed in the earlier text.

Section 42-302.21(h)(1)

Specific Purpose:

This section is adopted to specify that the counties must contact the governing body of the tribal land or Alaskan native village in order to obtain the unemployment rate for the Indian country or the native village.

Factual Basis:

This section is necessary to comply with Welfare and Institutions Code Section 11454.5(b)(5), which exempts a month from the 60-month time limit if the recipient lived in Indian country or an Alaskan native village in which at least 50 percent of the adults living in the Indian country or native village are not employed.

Section 42-302.21(j)

Post Hearing Modifications

Specific Purpose:

Section 42-302.21(j) is being amended in response to public comments received.

Factual Basis:

A cash grant is not sent if the grant amount is less than \$10. Amending this section to delete the phrase "or less" and adopt the phrase "less than" to clarify that criteria.

Section 42-302.3

Specific Purpose:

This section is adopted to specify that upon request, the county must provide the recipient with a form to request and document the request for an exemption or exception to the 60-month time limit.

Factual Basis:

This section is necessary to ensure that recipients are provided with a form to document their request for exemptions or exceptions to the 60-month time limit as set forth in Welfare and Institutions Code Sections 11454(e) and 11454.5(b).

Final Modifications

In response to public comments received, this section is being amended to clarify that an applicant or a recipient can request an exemption/exception verbally or in writing and that the county shall document the request and provide an exemption/exception request form if necessary to complete the request. This section is also being amended to include the exemptions for the 18- or 24-month time limit.

New Section 42-302.3(a)

Post Hearing Modifications

Specific Purpose:

Section 42-302.3(a) is being adopted in response to public comments received.

Factual Basis:

Recipients can claim exemptions to which they are entitled as set forth in Welfare and Institutions Code Sections 11454(e) and 11454.5(b). Adopting this section clarifies that the county shall not require a completed request form for an exemption/exception by the applicant or recipient if all required information to grant the exemption/exception is available to the county.

New Section 42-302.3(b)

Post Hearing Modifications

Specific Purpose:

Section 42-302.3(b) is being adopted in response to public comments received.

Factual Basis:

Recipients can claim exemptions to which they are entitled as set forth in Welfare and Institutions Code Sections 11454(e) and 11454.5(b). Adopting this section clarifies that exemptions/exceptions such as 60 years of age or older, aid reimbursed by child support collected, grant amounts less than \$10, and only receiving supportive services do not require a completion of the request form.

#### New Sections 42-302.31(a) through (e)

##### Specific Purpose:

These sections are being adopted to require that the exemption/exception request form must include specific information on time limit exemptions and exceptions and the process for requesting them, including the right to appeal a denial of the request through a state hearing.

##### Factual Basis:

These sections are necessary to ensure that recipients are provided with the necessary information to request and receive exemptions or exceptions to the 60-month time limit to which they are entitled. Sections 42-302.31(a) through 42-302.31(e) are necessary to carry out the requirements for exemptions and exceptions as set forth in Welfare and Institutions Code Sections 11454(e) and 11454.5(b).

#### Section 42-302.31(c)

##### Final Modifications

In response to public comments received, this section is being amended to clarify that the form will include a statement of exemptions from the time limit that do not require a written request. The word “formal” is being deleted and the word “written” is being adopted as "written" refers to requesting an exemption in writing.

#### Section 42-302.31(d)

##### Final Modifications

In response to public comments received, this section is being amended to clarify that the reason for an exemption/exception will be provided only if the exemption/exception is denied.

#### Section 42-302.32

##### Specific Purpose:

This section is adopted to specify that the county must inform the individual of the determination of the exemption or exception within 15 days from the date of receipt of the completed request form. This section also specifies that the county may exceed the 15-day limit to complete the determination if the determination is delayed due to specific circumstances beyond the control of the agency.

Factual Basis:

This section is necessary to establish a limited period for the county to respond to an individual's claim for an exemption or exception, in order to ensure timely determination of exemptions/exceptions set forth in Welfare and Institutions Code Section 11454(e) and 11454.5(b).

Final Modifications

In response to public comments received, this section is being amended to clarify that the recipient must be informed of the determination no later than 15 days from the date of a completed request for an exemption/exception. The word "limit" has been deleted and the word "response" has been added as "response" refers to the period allowed by the county to respond to the recipient.

Section 42-302.33

Specific Purpose:

This section is adopted to specify that the county must use all available and relevant case records before requesting additional verification from the recipient.

Factual Basis:

This section is necessary to assist recipients in claiming the exemptions and exceptions to which they are entitled. This section is necessary to carry out the requirements for exemptions and exceptions as set forth in Welfare and Institutions Code Sections 11454(e) and 11454.5(b).

Final Modifications

In response to public comments received, this section is being amended to clarify that counties shall assist the applicant/recipient in obtaining the necessary verification for the exemption/exception with reference to Section 40-107.1.

Section 42-302.34

Specific Purpose:



This section is adopted to specify that the notice sent to deny or approve a recipient's request for an exemption or exception includes the reason for the determination and the individual's right to appeal the determination.

Factual Basis:

This section is necessary to ensure that the individual is given the information needed to explain the denial/approval of the request for the exemption or exception to the 60-month time limit. This MPP section is necessary to carry out the requirements for an exemption and exception as set forth in Welfare and Institutions Code Sections 11454(e) and 11454.5(b).

Final Modifications

In response to public comments received, this section is being amended to clarify that the determination notice shall only state the reason for the exemption or exception if the exemption or exception is denied. The criteria for the exemptions and exceptions to the CalWORKs 60-month time limit are specified in the regulations and do not require a reference in this section.

Sections 42-302.34(a) through (c)

Post Hearing Modifications

Specific Purpose:

Sections 42-302.34(a) through (c) are being deleted in response to public comments received.

Factual Basis:

The criteria for the exemptions and exceptions to the CalWORKs 60-month time limit are specified in the regulations and do not require a reference in these sections.

Section 44-133.51

Specific Purpose:

This section is amended to add a cross-reference to new Section 44-133.8.

Factual Basis:

This cross-reference is necessary to clarify that Section 44-133.5 does not provide direction for the calculation of benefits for safety net benefits and to direct readers to new Section 44-133.8 that specifies how safety net benefits are calculated.

#### Section 44-133.8

##### Specific Purpose:

This section is adopted to specify how safety net benefits are calculated.

##### Factual Basis:

This section is necessary because current regulations do not specify how safety net benefits for remaining assistance unit (AU) members are calculated when the 60-month time limit is reached.

#### Section 44-133.81

##### Specific Purpose:

This section is adopted to specify how safety net benefits are calculated when the timed-out adult is a parent of a child in the remaining AU. When a parent is ineligible for aid because his or her 60-month time limit has expired, the parent's income is included in the grant calculation, but the parent's needs are not included.

##### Factual Basis:

This section is necessary because current regulations do not specify how safety net benefits for remaining AU members are calculated when a parent in the AU reaches his or her 60-month time limit. Welfare and Institutions Code Section 11320.15 provides that timed-out persons shall be removed from the assistance unit for the purposes of calculation of aid. This means the parent's needs cannot be included in determining the safety net grant for the remaining children. However, these parents still have a duty to support their children, so their income must be considered.

#### Section 44-133.82

##### Specific Purpose:

This section is adopted to specify how safety net benefits are calculated when the timed-out adult is a non-parent caretaker relative of a child in the remaining AU. When a non-parent caretaker relative is ineligible for aid because his or her 60-month time limit has expired, neither the income nor needs of the non-parent caretaker relative are included in the grant calculation.

Factual Basis:

This section is necessary because current regulations do not specify how safety net benefits for cases with a non-parent caretaker relative are calculated when the 60-month time limit is reached. Welfare and Institutions Code Section 11320.15 provides that timed-out persons shall be removed from the AU for the purposes of calculation of aid. Thus non-parent caretaker relatives whose 60-month time limit has expired would no longer be eligible to be included in the AU as an optional member. Since non-parent caretaker relatives have no duty to support the children in the AU, the non-parent income and needs cannot be considered, unless income is willingly contributed to the child under Section 44-133.6.

Section 44-133.83

Specific Purpose:

This section is adopted to specify how safety net benefits are calculated when the timed-out adult is a stepparent of a child in the remaining AU. This section specifies that timed-out stepparents not required to be in the AU and living in the home are no longer eligible to be optional AU members, and their income and needs shall be treated in accordance with Sections 44-133.51 and 44-133.511.

Factual Basis:

This section is necessary because current regulations do not specify how to calculate safety net benefits for AUs with stepparents whose 60-month time limit has expired. Welfare and Institutions Code Section 11320.15 provides that timed-out persons shall be removed from the AU for the purposes of calculation of aid. A stepparent is an optional member of the AU. A stepparent whose 60-month time limit has expired is no longer eligible to be an optional AU member and their income and needs are considered in the grant calculation pursuant to Sections 44-133.51 and 44-133.511.

Section 44-133.84

Specific Purpose:

This section is adopted to cross-reference other applicable grant calculation and time limit regulations.

Factual Basis:

This section is necessary to ensure that readers are appropriately directed to other applicable regulations for timed-out adults.

Section 44-352.113

### Post Hearing Modifications

#### Specific Purpose:

Section 44-352.113 is being amended in response to public comments received.

#### Factual Basis:

Welfare and Institutions Code Section 11454.5(b)(3) specifies the process to exempt months of aid by child support collection. Amending Section 44-352.113 to delete text referring to subtracting any "support payments" and adopting text "excluding child support recoupment" is necessary to specify that child support payments are not subtracted from the total amount of aid paid to calculate an overpayment. Deleting the reference to the child support payments is necessary because the application of child support to offset overpayments is no longer applicable as child support recoupment shall be used to reimburse and exempt months of aid for the CalWORKs 60-month time limit.

### Section 44-352.123

### Post Hearing Modifications

#### Specific Purpose:

Section 44-352.123 is being amended in response to public comments.

#### Factual Basis:

Welfare and Institutions Code Section 11454.5(b)(3) specifies the process to exempt months of aid by child support collection. Amending Section 44-352.123 to delete text referring to subtracting any "support payments" and adopt text "excluding child support recoupment" specifies that child support payments are not subtracted from the total amount of aid paid to calculate an overpayment. Amending Section 44-352.123 to delete the reference to the child support payments is necessary because the application of child support to offset overpayments is no longer applicable as child support recoupment shall be used to reimburse and exempt months of aid for the CalWORKs 60-month time limit. This section is necessary to ensure compliance with the process to exempt months of aid by child support collection pursuant to Section 11454.5(b)(3) of the Welfare and Institutions Code.

### Section 82-832.1(d)

#### Specific Purpose:

This section is being deleted to avoid duplication of regulations. Requirements regarding individuals who have exceeded the 60-month time limit are now in new Section 82-833. Sections 82-833 (e) through (k) are renumbered to (d) through (j) accordingly.

Factual Basis:

This deletion is necessary to avoid duplication of regulatory language. In addition, Sections 82-833(e) through (k) are being renumbered to (d) through (j) for clarity and ease of use.

Sections 82-833 and 82-833.1

Specific Purpose:

This title and section are being adopted to describe timed-out adults and to cross-reference the MPP section providing for the treatment of income and needs of such adults.

Factual Basis:

This title and section are necessary to define the status of timed-out adults with relation to the AU and to direct readers to the MPP section that control the use of a timed-out adult's income and needs.

b) Identification of Documents Upon Which Department Is Relying

AB 1542, Chapter 270, Statutes of 1997  
AB 429, Chapter 111, Statutes of 2001  
42 U.S.C. 608(a)(7)(A) and (B)

c) Local Mandate Statement

These regulations impose a mandate upon county welfare departments, but not school districts. There are no state-mandated local costs in these regulations which require reimbursement under Section 17500 et seq. of the Government Code because the CalWORKs program provides for offsetting savings to local agencies that result in no net costs to local agencies, within the meaning of Section 17580 of the Government Code.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #5 at a public hearing held on April 17, 2002. The public hearing was preceded by a 45-day public comment period from March 1, 2002 through April 17, 2002. No verbal testimony was presented at the public hearing.

Written comments were received from the following individuals:

Carolyn Estrada San Joaquin County	(CESJC)
Frank J. Mecca California Welfare Directors Association	(FJMCWDA)
Kevin Aslanian California Coalition of Welfare Rights Organizations	(KACCWRO)
Judy Varela County of San Bernardino Human Services System Administration	(JVCSBHSSA)
Nu Usaha Western Center on Law and Poverty	(NUWCLP)
Katherine Meiss Neighborhood Legal Services Los Angeles County	(KMNLSLAC)
Jodie Berger Legal Aid Society-Employment Law Center	(JBLASELC)

The summarized public comments and the Department's response follow:

General

1) Comment: (FJMCWDA)

"I am writing on behalf of the County Welfare Directors Association of California (CWDA) to comment on the proposed regulations regarding CalWORKs 60-month time limit procedures. Our comments focus on the noticing requirements contained in section 40-107 of the regulations.

Specifically, subparagraphs .141 through .143 of section 40-107 require counties to inform applicants and recipients, in writing, at the time that eligibility for aid is authorized, at redetermination, and at the 54<sup>th</sup> and 58<sup>th</sup> countable months on aid, of the following:

1. The cumulative number of countable months and the number of months reported on the most recent notice, if any.
2. The remaining number of months that the recipient may be eligible for aid.
3. The specific exempt months since the last notice of action.

The first two items were in original regulations that we reviewed. While these requirements will place a significant new workload on counties, we agree that notifying clients of this information periodically is sound policy that will enable CalWORKs recipients to stay informed of their remaining months on aid. However, the third requirement – specific exempt months – was not previously discussed and only added to the final regulations. This particular requirement represents a tremendous unfunded workload for county staff, for what we believe is relatively little improvement in the notices that are required.

Notifying every recipient of which specific months were exempted will require CalWORKs staff to do significant additional work – much of it manual – in order to research this information. The Welfare Data Tracking Implementation Project (WDTIP), which is intended to count months on aid, is not yet implemented in every county and therefore will not provide this level of detail for every client. Further, CWDA estimates a \$155 million shortfall in administration for the coming budget year, based on a 58-county survey of administrative needs that did not take into account this major new workload.

Further, we believe that most recipients are unlikely to want this level of detail, and it may only raise more questions among those receiving such detailed notices. The recipients who do want to know which specific months were exempt can ask for this information and it will be provided within 30 days of their request, under subparagraph .143. Allowing the information to be requested and provided on a case-by-case basis would alleviate these significant workload concerns, which are especially salient in a year when the lack of sufficient resources for CalWORKs administration is reaching a critical point. Based on the overall administrative funding shortfall and the ability of clients to ask for the data on a case-by-case basis, we respectfully request elimination of the requirement that every notice sent to clients contain the exempted months."

Response:

The Department thanks Mr. Mecca for his comments. However, the Department does not agree with the comment that the additional information notifying the recipients of their specific exempt months provides little improvement to the notices of action. On the contrary, by including the specific exempt months, the notice will provide recipients with the necessary information to ensure that they received the exemptions to which they were entitled. Further, the notices provide the necessary information to determine the actual number of months of aid that were counted toward the 60-month time limit and allows the recipient to appeal the decision by the county.

The WDTIP system provides counties with recipients' time limit information, including the period(s) of time a recipient received aid, the specific months that were exempt, and the reason(s) for the exemption. Although four counties have yet to convert their county data to the WDTIP system, the system can still be accessed by all 58 counties.

Section 40-107.14

2) Comment: (KMNLSLAC)

"As stated in my comment to Section 40-107.142, errors are rampant in the attribution of child support payments. In addition, for many recipients this may well be the only means by which they could add time to their clock. It is vital that a separate NOA should go out detailing any child support payments and offset that the County undertakes. such a NOA should go out at 2 years, one year, six months, and 3 and one months prior to the 60 months. The NOA should inform the person about what specific payments and offsets were made for what months."

Response:

The Department thanks Ms. Meiss for her comments. In response to testimony, Sections 42-302.21(g)(1)(A) through (G) have been adopted to instruct counties of the process to reimburse months of aid by child support collection. Notification to applicants/recipients are required at specific intervals, that occur annually, within six months of termination from aid, upon request from the recipient, at the 60<sup>th</sup> month on aid, and post the 60-month time limit when child support collection reimburses a month on aid. Further, Sections 40-107.141, 40-107.142, and 40-107.144 detail the time on aid information that will be required on the notices of action. The notices require the specific exempt months, including the months exempt by child support reimbursement, the countable months of aid, and the remaining number of months of aid.

Section 40-107.141

3) Comment: (JVCSBHSSA)

"As written every applicant is to be informed about the cumulative number of countable months of aid received and the number of exempt months at application, whether or not there has been a history of aid received previously.

Recommendations: Reword to state that a Notice of Actions is not required if there is no previous history of aid.



The applicant shall be informed, by notice of actions, at the time that eligibility for aid is authorized if there is a history of aid received in California....."

Response:

The Department thanks Ms. Varela for her comments. In response to testimony, Section 40-107.141 was amended to clarify that the applicant will be informed of the number of months on aid if the applicant received aid in California or other states on or after January 1, 1998.

4) Comment: (KMNLSLAC)

"The Notice of Action (hereafter NOA) should be sent more frequently in the last year. I suggest at 12 months, nine months, six months, and two months. In particular, we have frequently seen cases where redeterminations do not occur when they should. They can be delayed for weeks or even months. Therefore, it is important that in the last year it should be clear that at the one year mark the NOA should be sent. This is especially critical for working parents who cycle on and off aid."

Response:

The Department thanks Ms. Meiss for her comments. The Department does not concur with the suggestion to inform recipients at twelve, nine, six, and two months within the last year. The Department has developed the intervals to inform recipients as stated in the response to comment 2. To schedule additional intervals that would allow only three to four months to recipients' time limit, is not sufficient to merit another NOA. Also, the county is required to respond to a recipient's request for time limit information, in writing, within 30 days from the receipt of the request.

5) Comment: (NUWCLP)

"As written, the current draft applies only to returning families. A subsection should be added to explain how this applies to new applicants who have never previously received TANF funds. New applicants should also receive a notice that they have not utilized any of the 60-month limit.

This section should cross refer to section 42-302.34 which requires the county to separately inform applicants of its action on exemption information."

Response:

The Department thanks Ms. Usaha for her comments. In response to testimony, Section 40-107.141 was amended to clarify that the applicant will be informed of the number of months on aid if the applicant received aid in California or other states on or after January 1, 1998. The Department does not agree with the comment that recipients who have not received aid in California or other states since January 1, 1998 be notified that no months have accrued toward the time limit. However, Section 40-107.14 has been amended to require counties to inform all applicants/recipients, whether or not they have received TANF aid, of the 60-

month time limit requirements including the process by which recipients can claim the time limit exemptions, at application, redetermination and any time a notice of action is sent.

6) Comment: (JBLASELC)

"Add a subsection (b) that explains how this section applies to new applicants who have never previously received TANF funds versus returning families. The section as currently drafted appears to apply only to returning families. ("The county should issue a notice to applicants who have not received TANF aid previously informing them that they have no months utilized, of the 60 month limit, and whether the county has reviewed an exemption during application (and the result thereof).

This section also should provide that the notice include information on the bases for exemption/extension/waiver and whether or not there is any child support offset, as well as the specific months in which these "clock stoppers" occurred. This is important for instances in which the person may not have received a prior written notice. (Many counties currently do not appear to be issuing notices when granting exemption requests.)

Amend this section to include that the county inform applicants of any requests for exemptions that it denied, when it denied the exemption, and the reason for the denial. Cross refer to Section 42-302.34 to clarify that the county must also separately inform applicants of its action on exemption information.

Finally, this section should include a requirement that the county note that families with low grants (such as \$100 or less) can choose to leave cash aid and thereby reserve months of eligibility for a later time, and the pros and cons of doing so. this would be consistent with Welfare and Institutions Code section 10500."

Response:

The Department thanks Ms. Berger for her comments. As stated in the response to Comment #5, Section 40-107.14 is amended to clarify that only applicants who received aid on or after January 1, 1998 are notified of their time on aid.

The Department does not concur that the notice of action include information on the bases for the exemption/extension/waiver. The determination notice required in Section 40-302.34 provides adequate notification of the reason and is available to the recipients.

Section 42-302.32 requires that the county respond to a request for an exemption/exception by providing a determination notice no later than 15 days from the date of a completed request which can be at application and any time afterward.

In accordance with Section 40-107.14, counties must inform the applicants/recipients, in writing and orally, as necessary, of all time limit requirements, including the process to claim exemptions at application, redetermination, and any time a notice of action, establishing time on aid, is sent. In addition, the statewide informing notice (CW2184) that describes the time limit requirements includes a statement that families who receive low grants can choose to leave cash aid, which will reserve months of eligibility in the future.

Section 40-107.142

7) Comment: (CESJC)

"We see no significance in notification at the 58<sup>th</sup> month of aid. Counties are required to inform applicants at application, at least once a year at reinvestigation, at the 54<sup>th</sup> month, and when the client requests it. Notification at the 58<sup>th</sup> month is excessive notification. This puts a great burden on counties and is a major workload issue. eligibility staff are burdened by several layers of eligibility determinations (school verification, immunization verification, MFG determinations, homeless assistance determinations, noncitizen eligibility determinations and aid claiming, direct deposit (sic) of grant payments, EBT for grant payments, etc.)

Tracking requirements are extremely time consuming for the Eligibility staff and there are inadequate and inaccurate tracking systems to help them in this process, especially in determining the amount of child support collected at all of these intervals in order to notify clients accurately. Time spent on tracking time limits and gathering information to send to the client is better spent in determining eligibility for assistance, insuring correct aid payments, and determining supportive needs for clients."

Response:

The Department thanks Ms. Estrada for her comments. In response to testimony, Section 40-107.142 is amended to eliminate the 58<sup>th</sup> notice of action. However, Section 40-107.144 is adopted to require counties provide at least one notice of action to each recipient during the period of the recipient's 54<sup>th</sup> through 58<sup>th</sup> countable months on aid. The Department supports this adoption as a necessary requirement to ensure that recipients are provided with an adequate notice that specifies the number of months of aid received and the specific exemptions. This section also allows counties flexibility in meeting the informing requirements which will therefore assist counties in providing timely determinations of recipients' time on aid and of the exemptions/exceptions.

8) Comment: (JVCSBHSSA)

"As written, CWDs must inform recipients about they cumulative number of countable months of aid received and the number of exempt months at the annual redetermination, month 54 and month 58. the CWD will also send a discontinuance notice of action during the 60<sup>th</sup> month of aid. In a six-month period, the recipient could receive three different notices regarding their time on aid. Additional, there is very little time between the notice months. There are four months between month 54 and month 58, and two months between month 58 and month 60.

Sending notices of actions regarding time on aid in a short period of time will confuse the recipient. the noticing requirements will increase the workload that is already excessive and cannot absorb the additional noticing requirements.

Recommendation: Delete the informing requirement for month 58 and inform the recipient about their time on aid at month 54 and the annual redetermination. Or, change the noticing requirement to month 56."

Response:

The Department thanks Ms. Varela for her comments. Please see the response to Comment 7, Section 40-107.142.

9) Comment: (KMNLSLAC)

"In addition to sending the notice more frequently, the content should be improved. Recipients should be informed of the exemptions and exceptions to the counting of months, so that they can determine if the County is correct. Without this information they will not know that some of the counted months should not be included. Due process requires that prior to terminating aid you inform the person of their right to challenge the cut off – this includes the right to information about what month should not have been counted.

First, information on the child support offset should be added. We know from our representation of recipients in overpayment cases that often the workers do not have information, or correct information, on child support that has been paid. It is critical that information describing the offset rule be included in the general NOA. In addition, the regulations should be modified to require a specific NOA be sent regarding child support offsets (See comments on Section 40-107.14 for further description).

Second, language should be added regarding the exemptions to the 60-month rule. This should be a brief description indicating that some individuals are exempt and their clocks don't tick such as the disabled, caretakers of the disabled, and the elderly. The NOA could then advise the person to call their worker for an exemption form or to learn more about whether they qualify for an exemption. Similarly, will there be a mandatory "exception form" that will advise recipients of what months should not count? If so, at the very least, that should be referred to that from in this NOA."

Response:

The Department thanks Ms. Meiss for her comments. As provided in Section 40-107.14, counties are required to inform applicants/recipients in writing and orally, as necessary of all time limit requirements including the exemptions to the time limit. The required statewide form includes a description of the exemptions and exceptions and will be provided to applicants/recipients at application, redetermination and any time a notice of action, establishing time on aid, is sent. Further, Sections 40-107.141 through 40-107.141.149 and Section 42-302.21(g)(1)(F) require counties provide notices of action at specific intervals. These notices specify the number of months of aid received and the exempt months, including the months that were exempt by child support reimbursement.

Section 40-107.142(a)

10) Comment: (JBLASELC)

"Replace subsection (a) 'on most recent notice' with 'as of the month of the issuance of the notice provided pursuant to this section'. 'Most recent notice' otherwise seems to refer to the prior notice and not the notice being issued."

Response:

The Department thanks Ms. Berger for her comments. The notice of action is intended to only report the months of aid that counted toward the 60-month time limit since the last notice of action.

Section 40-107.142(b)

11) Comment: (JVCSBHSSA)

"The requirement to identify specific exempt months will be difficult and increase the worker's workload, as this cannot be done by automation.

Recommendation: The cumulative number of countable months that the recipient received aid and the cumulative number of exempt months ~~the specific exempt month~~ since the last notice of action,...."

Response:

The Department thanks Ms. Varela for her comments. Please see response to Comment #1, General.

12) Comment: (NUWCLP)

"Recipients should be informed more frequently of their time limit status. Given the difficulty of gathering documentation after an exempt month has passed, annual notice at redetermination is not sufficiently frequent to notify recipients that their records may not be consistent with the county's or that more documentation may be needed. Quarterly notice may be required.

Subsection (b) should be modified to require the notice to list the total months of exemption, and not just the number of months since the last notice."

Response:

The Department thanks Ms. Usaha for her comments. Please see response to Comment #4, Section 40-107.141. Section 40-107.142(b) need not require the previous months of aid as this information is provided on the previous notice of action.

13) Comment: (JBLASELC)

"Modify subsection (b) to include that the notice list the total months of exemption, and not just the number since the last provided notice."

Response:

The Department thanks Ms. Berger for her comments. See above response to Comment #12, Section 40-107.142(b).

Section 40-107.143

14) Comment: (KACCWRO)

"Section 40-107.143 provides that a CalWORKs participant can request information regarding the remaining number of months that the recipient may be eligible to receive aid. This is a fine gesture, but how does the participant get this information? Do they leave a message on the phone that is rarely returned? There needs to be some instrument whereby the participant can request this information.

.143 Upon request for time limit information, a current or former recipient shall be informed, in writing, within 30 calendar days from the date of the receipt of the request.

The notice shall include:

- (a) The cumulative number of countable months that the recipient received aid.
- (b) The specific months that were exempt from the 60-month time limit since the most recent notification (pursuant to MPP Sections 40-107.141 and 40-107.142).
- (c) The remaining number of months that the recipient may be eligible to receive aid.
- (d) The current or former recipient may submit the request for this information by asking for it on the monthly income report or any other form of request that the current or former recipient desires to submit such request."

Response:

The Department thanks Mr. Aslanian for his comments. The Department does not agree with the suggested language on the informing notice. Counties are required to send notices of action informing recipients of their time on aid at the scheduled intervals provided in Sections 40-107.141-40-107.144 and 40-107.147-40-107.149. The informing notice provided in Section 40-107.146 is a supplement to the other notices which allows the recipient to request time on aid information at any time. In response to testimony, Section 40-107.146 is amended to require the county to document a recipient's request for time limit information to ensure that the recipient receives a written response to the request. The recipient's request for time limit information may be a verbal or written request.

15) Comment: (JBLASELC)

"This section should include an additional specific time for the notice at 48 months. While it is important to provide the notice at redetermination, and that provision should remain, the

scheduling of these appointments relative to the time limit can vary tremendously. Also, it is important that the message not get lost in the huge amount of information conveyed during these appointments. Adding a 48-month notice would ensure that families get a one-year warning. It is also important that families have as much notice as possible when their records don't comport with the county's information, so they can gather documentation to support their position.

This (or some other section) should specify that applicants/recipients and former recipients must be told in writing, orally, and in WTW handbook of their right to request a time-limit accounting.

The time to provide a notice of remaining months upon request of the recipient should be shortened to 10, or at the most, 15 days. counties are required to maintain this information, and should have it available and current for any given month."

Response:

The Department thanks Ms. Berger for her comments. The Department does not concur with the suggestion for an additional NOA at 48 months. As provided in Sections 40-107.141-40-107.149, counties will be required to send notices to applicants/recipients at specific intervals, that occur annually, within six months of termination from aid, upon request from the recipient, at the 60<sup>th</sup> month on aid, and post the 60-month time limit when child support collection reimburses a month on aid.

The Department does not concur with the suggestion to reduce the period of time for a county to respond to a recipient's request for time limit information to 10 or 15 days. As county workers cannot plan for a request by a recipient for time limit information, counties need sufficient time to gather the time limit information and make the determination on the number of months of aid received.

Section 40-107.143(b)

16) Comment: (JVCSBHSSA)

"The requirement to identify specific exempt months will be difficult and increase the worker's workload, as this cannot be done by automation.

Recommendation: The cumulative number of exempt months ~~specific months~~ that were exempt from the 60-month time limit since the most recent notification."

Response:

The Department thanks Ms. Varela for her comments. See response to Comment #1, General.

17) Comment: (NUWCLP)

"Counties should be able to respond more quickly than 30 days to recipients' request for time limit information. given that counties must act on a request for exemption within 15 days, they should be able to respond to the simple request for information about the months that have been used and the months that have been exempt.

Subsection (b) should be modified to require the notice to specify the total number of exempt months.

This subsection should be modified to require the county to inform recipients in writing and orally of their right to request a time-limit accounting."

Response:

The Department thanks Ms. Usaha for her comments. See response to Comment #15, Section 40-107.143. Section 40-107.14 is being amended to require that counties inform applicants/recipients of all time limit requirements, including the process to claim exemptions at application, redetermination, and any time a notice of action is sent. In addition, the statewide form (CW2184) will be amended to state that the applicant/recipient can contact her/his worker to request an exemption and to request time on aid information.

Section 40-107.15

18) Comment: (KACCWRO)

"This section provides that the county will mail a letter to the other state, but does not provide that a copy of that letter is also mailed to the current or former recipient. It should, even with the fact section .151 provides another Notice of Action (NOA) to the recipient. Sometimes the county may mail a letter to the other State, but forget to mail a NOA to the recipient. This will make sure that the recipient knows one way or another the number of months left.

40-107.15 When a former CalWORKs recipient applies for aid in another state and the other state requests information on the number of months of assistance provided by Temporary Assistance for Needy Families (TANF) funds, the county where the aid was last received shall promptly respond to other states in writing. A copy of that letter shall also be mailed to the current or former recipient."

Response:

The Department thanks Mr. Aslanian for his comments. The Department does not concur with the suggestion to send a copy of the letter to the recipient. The notice of action provides more information regarding a recipient's aided months in California and provides the recipient with the process to appeal the county's decision.

19) Comment: (NUWCLP)



"This section raises important confidentiality issues. We are still researching the limits on the county's ability to share this data with other states and may have additional concerns at a later time. At a minimum, however, a county should not be allowed to reply orally to another state's request for a number of months of receipt.

In addition to providing the number of months of TANF-funded assistance, the county should also include information about the number of months of CalWORKs exemption. Only the information that the individual met California's exemption/waiver requirements should be provided, but not the basis for exemption/waiver. This information will help other states to determine whether the months of aid in California would count under their own laws."

Response:

The Department thanks Ms. Usaha for her comments. The Department does not concur with the testimony that information regarding TANF aid cannot be provided to another state. As provided in Welfare and Institutions Code 10850, the reporting of aided months is an implicit condition to establish eligibility for TANF. As required under TANF regulations (45 CFR, Section 264.1), a state cannot aid a family in which the head-of-household received assistance for 60 months.

20) Comment: (JBLASELC)

"Modify this section to specify that counties must include in the information provided to other states information on the number of months that aid was subject to a CalWORKs exemption/waiver, as governed by confidentiality restrictions. (Thus only the information that the person met a state exemption/waiver would be provided, but not the basis.) Other states need this information to determine the months of California aid would count under their own laws."

Response:

The Department thanks Ms. Berger for her comments. Please see above response to Comment #19, Section 40-107.15.

Section 42-302

21) Comment: (KMNLSLAC)

"These sections are overly restrictive. an individual who has been sanctioned because of depression or another "mild" disability but was later diagnosed as severely disabled would be excluded from relief because they had one or more sanctions. We have seen many women in particular who suffer from depression but do not have access to mental health professionals that can diagnose their illness. They get sanctioned and do not fight it – they give up (a symptom of their depression obviously). Similarly they are unable to hold a job. It is only when we get involved and get them medical help that they can go back to work. Yet when they hit the 60-month limit under the regulations as currently written they would not qualify for an exception – unless the depression was severe enough to meet a disability

standard. The section that might help these women is in MPP 114(b)(2)(B), yet it in second step – belongs in step one – has there been full cooperation? Please move it and revise it to address this situation."

Response:

The Department thanks Ms. Meiss for her comments. The Department does not concur. Section 42-302.114(a)(2) of the regulations would allow an individual who had been sanctioned to be considered to have a history of participation and cooperation, if there is documentation of an impairment and a period of participation in welfare-to-work activities as specified in Section 42-302.114(a)(2)(A). In the situation described by the commentor, the medical help that is provided to an individual would serve as documentation of the existence of an impairment. However, the existence of a past impairment alone is not sufficient to grant an extension of the 60-month time limit. The statute, Welfare and Institutions Code Section 11454(e)(5), provides that the 60-month time limit may be extended if the county determines that an individual is incapable of work. or participation in welfare-to-work activities, the statute does not provide for a reevaluation of an individual's entire time on aid to identify a past period of impairment for the purpose of granting a current extension of the 60-month time limit.

Section 42-302.114

22) Comment: (JBLASELC)

"This section should add that the counties may establish additional grounds on which participants can qualify for a time extension, but cannot impose greater restrictions or qualifications on the minimum standards set out by the regulations. Thus, counties can be more generous, but not more limiting, in the granting of time extensions.

Response:

The Department thanks Ms. Berger for her comments. The Department believes the regulations establish a framework and minimum criteria to use in granting a time extension. In addition, Section 42-302.114(b)(2) of the regulations provides counties with a degree of latitude in determining whether an individual is incapable of maintaining employment or participating in welfare-to-work activities. However, setting a minimum standard for time extensions and allowing counties to be "more generous" would potentially allow counties to exceed the statutory parameters for granting time extensions under Welfare and Institutions Code Section 11454(e)(5), which requires that the individual be found to be incapable of work based upon an assessment of the individual.

Section 42-302.114(a)

23) Comment: (JBLASELC)

"Modify Subsection (a) to clarify that if the participant meets EITHER the sub (1) or sub (2) criteria, the county shall find a "history of participation and full cooperation." As written,

the "may apply" language is confusing, and may be construed as permitting county discretion."

Response:

The Department thanks Ms. Berger for her comments. The Department agrees that Section 42-302.114(a) may be misinterpreted and has amended the regulation to further clarify that if either criterion is met a participant shall be found to have a history of participation and full cooperation.

Section 42-302.114(a)(1)

24) Comment: (NUWCLP)

"To clarify that if a participant meets either subsection (1) or (2), the county shall find a history of participation and full cooperation, "that may apply" should be deleted. As currently drafted, it may confuse the counties and may be construed as permitting county discretion in making this determination.

Subsection (a)(1) should be modified to specify that a recipient who "has not failed to meet satisfactory participation, attendance and progress requirements without good cause" includes a person who had an episode of noncompliance but complied within the compliance period without being sanctioned, even if no good cause was found. Such a person has a history of participation and cooperation under Welfare and Institutions Code Section 11454(e)(5)."

Response:

The Department thanks Ms. Usaha for her comments. See response to Comment #23, Section 42-302.114(a).

The proposed amendment of Section 42-302.114(a)(1) is unnecessary. The individual in the situation described by the commentor would not have received a welfare-to-work financial sanction and the individual would be considered to have a history of participation and cooperation. The commentor is referred to Sections 42-721.28 and 42-721.282 which provide that an instance of noncompliance shall not be considered to have occurred if the individual did not have good cause for failing or refusing to comply, but agrees to a compliance plan and subsequently fulfills the terms of the compliance plan.

25) Comment: (JBLASELC)

"Modify Subsection (a)(1) to specify that counties shall not count instances when participants have successfully completed a compliance plan and cured a sanction as a failure to satisfactorily participate. Pursuant to W&I Code section 11454(e)(5), such a person has a history of participation and cooperation. Similarly, when the participant is successfully

participating in the compliance plan at the time s/he reaches the 60-month limit, the county should consider the individual as successfully participating."

Response:

The Department thanks Ms. Berger for her comments. See response to Comment #24, Section 42-302.114(a)(1).

Section 42-302.114(a)(1)(B)

26) Comment: (JBLASELC)

"Add a .114(a)(1)(B) to read: Sanctions that occurred during months for which the county later determines the participant should have been exempted from WTW participation shall not be considered a failure to participate or cooperate. Counties are to correct the participant's records and restore aid under these circumstances."

Response:

The Department thanks Ms. Berger for her comments. The proposed language goes beyond the scope of this filing. By this filing, the Department has provided the criteria and guidance necessary to allow counties to determine if an individual qualifies for an extension of their 60-month time limit based upon the individual's existing record of participation and current capabilities as provided under Welfare Institutions Code Section 11454(e) (5). The regulatory language proposed by the commentor would have the effect of creating an additional "appeal process" beyond the good cause/noncompliance/sanction and the timely appeal requirements as provided in Welfare and Institutions Code Sections 11327 and 10951, respectively.

Section 42-302.114(a)(2)

27) Comment: (NUWCLP)

"In subsection (a)(2), the word "significant" in "significant impairment or combination of impairments" should be deleted. It is unnecessarily restrictive and confusing to describe an impairment which does not meet the exemption standard or section 42-712.442 as significant."

Response:

The Department thanks Ms. Usaha for her comments. The Department agrees that use of the term significant may lead to confusion with the impairment standard that is used to determine exemptions and has deleted the term from Sections 42-302.114(a)(2) and 42-302.114(a)(2)(B). In addition, the phrase, "to the best of his/her ability" and reference to Section 42-712.442 has also been deleted from this section since a sustained period of welfare-to-work participation is adequately defined in Section 42-302.114(a)(2)(A).

28) Comment: (JBLASELC)

"At a minimum, delete the word "significant" as a modifier of "impairment or combination of impairments." If participants have an impairment or condition that significantly impairs their ability to participate in CalWORKs, they have met the exemption standard of 42-712.442, and those months should not be counted towards the time limits. It makes no sense, generates confusion, and it is an inappropriately restrictive standard to require a significant impairment that somehow does not qualify as an exemption/DV waiver, as stated in subsection (B).

Under 42-711.56-.58, the county is to obtain an evaluation regarding conditions that could impair participation in welfare-to-work, determine if the person can participate, and if so, create an appropriate plan (with accommodations). Similar provisions apply in 41-715 regarding creating an appropriate WTW plan for survivors of domestic violence when the participant is unable to perform the WTW assignment or participation would render the family unsafe or unfairly penalize them. Prior to sanctioning, the county is required to consult an expert in the field to determine if the alleged failure is related to the impairment or condition. If so, the county is not to sanction the individual, should find good cause, and review for whether the individual should have been exempted/receive a waiver.

We therefore recommend that sub (2) remind counties of the above obligations, and require appropriate correction of any sanction/non-participation finding or action as well as review for the applicability of months or exemption.

In addition, the regulation should state that any time a participant carries out the WTW to the best of his or her ability, the county should consider that individual to have a history of participation and cooperation."

Response:

The Department thanks Ms. Berger for her comments. See Response to Comment #27, Section 42-302.114(a)(2); response to Comment #26, Section 42-302.114(a)(1)(B); and response to Comment #29, Section 42-302.114(a)(2)(A). The addition of regulatory language to remind counties of their duties under Sections 42-711.56-.58 and 42-715 is unnecessary. The cross-references to the aforementioned sections is sufficient reminder regarding the applicability of these regulations to the process of reviewing an individual's records and/or evaluating an impairment.

Section 42-302.114(a)(2)(A)

29) Comment: (NUWCLP)

"Subsection (a)(2)(A) should be clarified to state that "two or more periods of welfare-to-work participation of any length." The period of participation should also be shortened to three months in a 36-month period, rather than a 24-month period."

Response:

The Department thanks Ms. Usaha for her comments. The proposed amendment to the regulations, which would allow work participation of any length to be considered as participation and full cooperation, is unnecessary. In essence, Section 42-302.114(a)(2)(A), which allows two or more periods of welfare-to-work participation to count toward meeting the sustained participation requirement, allows participation of any length to be counted toward the six-month total participation requirement. However, the Department is amending this section to ensure that it is understood that the six-month period of participation is a cumulative total.

Reduction of the participation and cooperation standard to three months, the equivalent of one month of welfare-to-work participation per year also does not appear to be a reasonable interpretation of the statute. Current regulatory language that requires 6 months or two or more periods of participation equaling 6 months within a 24-month period provides for a meaningful period of participation and cooperation that allows for an assessment of an individual's capabilities and is also a more reasonable time period to apply in determining that an individual has a "history of participation and full cooperation."

30) Comment: (JBLASELC)

"Modify subsection (a)(2)(A) regarding "two or more periods of WTW participation." The revisions should read: "two or more periods of WTW participation of any length within a 24-month period." Welfare-to-work participation should be clarified as applying to participation in "any WTW assignment or activity." the period of participation should be shortened to 3 months, and the "look back" time should also be lengthened to 36 months.

Thus, the sentence would read: "For purposes of this section, three months of welfare-to-work participation in any welfare-to-work assignment or activity, or two or more periods of such participation of any length within a consecutive 36 months period, including participation in orientation/appraisal, job search, asst/evaluations, and post-assessment activities, shall be considered a sustained period."

Response:

The Department thanks Ms. Berger for her comments. See the response to Comment #29, Section 42-302.114(a)(2)(A).

Section 42-302.114(a)(2)(B)

31) Comment: (NUWCLP)

"The word "significant" in subsection (a)(2)(B) should be deleted."

Response:

The Department thanks Ms. Usaha for her comments. The Department agrees with the comment and for purposes of consistency with the amendment made to Section 42-302.114(a)(2), has deleted the term "significant".

Section 42-302.114(b)(1)

32) Comment: (NUWCLP)

"Subsection (b)(1) should be modified to define "fully participating" as meeting the required 32/35 hours per week.. Participants who have been permitted to perform fewer hours for good cause should automatically be considered not capable of maintaining employment or participating in welfare-to-work activities. a good cause is a condition or situation which interferes with the participant's ability to work. In addition, "full participation" should not include participants in counseling, AOD treatment, domestic violence services, or services that would limit the person's ability to work 32/35 hours per week.."

Response:

The Department thanks Ms. Usaha for her comments. Upon review of this section of the regulations, the Department concludes that a further definition of "fully participating" is required. However, it would be inappropriate to grant an extension of the 60-month time limit based solely on the fact that an individual is participating in welfare-to-work activities for less than 32- or 35-hours per week. For instance, an individual is fully capable of maintaining employment. However, she/he is participating for less than 32- or 35 hours per week because the Simplified Food Stamp calculation limits the individual's community service participation to less than 32 or 35 hours, or the county is unable to locate an appropriate community service placement to supplement an individual's hours of unsubsidized employment. Although the individual in these situations is not participating for 32-or 35 hours per week, the individual is fully capable of maintaining employment. The Department has amended Section 42-302.114(b)(1) to define "fully participating", as: 1) participation for 32/35 hours per week; or 2) successful participation in unsubsidized employment and/or a welfare-to-work activity for the number of hours an appropriate activity is reasonably available.

In addition, Section 42-302.114(b)(2)(B) [formerly Section 42-302.114(b)(2)(C)], which is cross-referenced in Section 42-302.114(b)(1) has been amended to include services such as counseling and AOD treatment as modifications to an individual's welfare-to-work activities that would be considered in determining if an individual is fully participating.

An automatic extension of the 60-month time limit for individuals that have good cause for not participating in welfare-to-work activities would not be warranted in all situations and would create inconsistencies between the good cause and time limit extension regulations. The "good cause regulations for not participating", Section 42-713, includes temporary conditions, such as short term illnesses and automobile breakdowns that would not be consistent with the standards for an extension of the 60-month time limit under Welfare and Institutions Code Section 11454(e)(5), which requires that an individual be found to be incapable of work or participation.

33) Comment: (JBLASELC)

"Subsection (b)(1) should be changed to define "fully participating" as meeting the required WTW participation hours of 32-35/hours/week. Counties automatically should consider anyone performing fewer hours not capable for work. a reduction of hours is only permitted for good cause; whatever is good cause for interfering with participation would also interfere with the person's ability to work.

This section should be further modified to specify that "full participation" in the WTW plan excludes individuals who are participating in counseling, AOD treatment, DV services, or other activities or services that would limit the person's ability to work 32-35 hours/week."

Response:

The Department thanks Ms. Berger for her comments. See response to Comment #32, Section 42-302.114(b)(1).

Section 42-302.114(b)(2)

34) Comment: (JBLASELC)

"Subsection (b)(2) should include as a criteria instances in which the person is unable to obtain/maintain employment that pays sufficient wages to support the AU member who will be timing out."

Response:

The Department thanks Ms. Berger for her comments. The proposed amendment to the regulations is not supported by current statute. Welfare and Institutions Code Section 11454(e)(5) allows an extension of the 60-month time limit if an individual is incapable of maintaining work or participation in welfare-to-work activities. In essence, a reasonable interpretation of statutory language requires that intrinsic factors, an individual's ability and fitness to work or participate in welfare-to-work activities, rather than external factors, an individual's current earnings, should be the primary criteria used to determine an extension of the 60-month time limit.

Section 42-302.114(b)(2)(A)

35) Comment: (NUWCLP)



"Subsection (b)(2)(A) – the word "severely" should be deleted. If an individual's impairment limits his/her ability to participate to less than 20 hours, the impairment is severe."

Response:

The Department thanks Ms. Usaha for her comments. The Department believes that use of the term "severely" is appropriate in describing an impairment that renders an individual incapable of working or participating for 20 or more hours per week. However, the Department has amended Section 42-302.114(b)(2)(A) to improve the clarity of this section.

36) Comment: (JBLASELC)

"Subsection (b)(2)(A) should be amended to delete the word "severely" to modify the phrase "limits the individual's ability to successfully maintain employment..." If the condition renders the person unable to work or participate 20 or more hours, it is a severe limit.

Create a new section (or subsection to (A)) that provides: "If the county has reason to believe that an individual who has reached the 60-month limit has a physical, mental, emotional impairment or learning disability, AOD, or domestic violence issue that would impair the person's ability to obtain or maintain employment or participate for 20 hours or more, the county shall refer the individual for an evaluation as set forth in 42-711.56-.58 or 42-715."

Response:

The Department thanks Ms. Berger for her comments. See response to Comment 35, Section 42-302.114(b)(2)(A). Requiring an evaluation as set forth in Sections 42-711.56 through 42-711.58 or Section 42-715 would be overly prescriptive, and in many instances, unnecessary since the county would already have cause based on information/documentation to believe the individual is incapable of work or participation.

Section 42-302.114(b)(2)(B)

37) Comment: (NUWCLP)

"Subsection (b)(2)(B) is confusing and should be changed. There are at least three possible interpretations of this subsection.

1. It could be read to mean that an individual qualifies for a time extension if s/he has failed to make progress during the countable months in the 60-month period because of a condition or a domestic violence situation that lead to a failure to participate or progress in the WTW activities. If this is the interpretation, then this individual should have been exempt pursuant to sections 42-711.56-.58 or 42-715. The subsection then should be clarified to direct the county to retroactively exempt this person and correct those months to exemption/waiver months, and restore the months to the 60-month time clock..

2. It could be read to mean that the individual has a current condition or domestic violence situation that affects his/her ability to work. If this is the interpretation, the person should be covered by subsection (b)(2)(A), and subsection (B) is unnecessary and should be deleted.

3. It could be read to mean that an individual who previously had been exempt based on a condition or domestic violence situation, and who were unable to progress or benefit while participating in the WTW program during non-exempt months because of the interruptions in participation due to their condition or domestic violence situation, are also considered unable to work even though they no longer have the impairment or domestic violence situation. If this is the case, we fully support the principle that individuals who did not fully benefit from the 60-month time limited program, who may have recovered from the condition, should get an extension of time. this should, however, be more clearly explained."

Response:

The Department thanks Ms. Usaha for her comments. The Department agrees that Section 42-302.114(b)(2)(B) may be open to a variety of interpretations and has deleted this section of the regulation. Upon further review, it appears that existing regulations and/or regulations added with this filing adequately address situations in which an individual's past participation problems and/or failures to progress may be indicative of an inability to maintain employment or participation. Finally, adding time back on the "clock" for past periods of time that may have qualified for an exemption would exceed the scope of Welfare and Institutions Code Section 11454(e)(5) and it would be inappropriate to address this issue within this section of the regulations.

38) Comment: (JBLASELC)

"Subsection (2)(B) should be changed. It is confusing for the following reasons:

- It could be read to mean that the person has a current condition/DV situation that affects their ability to work/participate. Under this interpretation, the person should be covered by (b)(2)(A), rendering sub (B) unnecessary.
- It could be read to mean that the individual qualifies for a time extension if they failed to make progress (any time in the prior 60 countable months) because of a condition/DV situation that lead to a failure to participate or progress in the WTW activities. Under this interpretation, the paragraph describes individuals who should have qualified for an exemption pursuant to 42-711.56-.58 or 42-715. In this case, the subsection should be rewritten to clarify that if, on review for the 60-month extension, a county determines that past failures were for conditions/circumstances that qualified under the above-referenced sections, that the county is to retroactively correct those months to exemption/waiver months off the time clock.
- It could be read as applying to people who formerly had a condition/DV situation, for whom the county correctly exempted or waived participation, who were unable to make satisfactory progress/benefit by the WTW program because of the interruption(s) based on their conditions, who no longer have the condition/DV issues. If this is the intent, we support the principle that people who did not fully benefit from the 60-month time

limited program, who may have recovered from the condition, get an extension of time. In this case, the principle should be more clearly set out."

Response:

The Department thanks Ms. Berger for her comments. See response to Comment #37, Section 42-302.114(b)(2)(B).

Section 42-302.114(b)(2)(C)

39) Comment: (JBLASELC)

"Subsection (2)(C) should be deleted, and a new subsection (B)(1) inserted that state: "Individuals with a documented impairment that would necessitate a significant modification of hours qualified for an exemption. Counties are reminded to correct any months in which an individual had such an impairment by indicating the person was exempt, and removing the month from the time limit calculations (18-24 month and 60 month). (a) A "significant modification of hours" applies whenever the individual (1) could not, within the time limits, benefit from or complete the WTW activities determined appropriate through assessment at a reduced participation level; or (2) needed a 15% or greater reduction in participation hours.

As written, the section implies that a person who is unable to perform a significant number of the required hours was nonetheless a mandatory participant using up the time-limited training time and aid! The language is in conflict with the exemption standards and would defeat the purpose of the statute.

The statute and regulations provide that all recipients must participate in 32-35 hours/week unless exempt (or temporarily, for good cause). The WTW activity time limits and 60-month limit are based on the principle that the individual is fully participating in a WTW program, and receiving appropriate employment skills training and work experience to move that individual into self-sufficiency. At any point the person has a condition that significantly impairs their ability to work or participate in WTW activities, pursuant to the disability exemption provisions neither time limit is running. A condition that results in a significant reduction in participation *per se* "significantly impairs" the person's ability to work or participate. Whenever a person can't benefit from an activity assigned because of a condition, the reduction is significant. Also, a 15% reduction in participation is significant enough that the person would not fully benefit from the program. In either of these circumstances, the county should exempt the individual and provide information about volunteering to proceed at a pace appropriate to the person's condition."

Response:

The Department thanks Ms. Berger for her comments. The Department agrees that the language in Section 42-302.114(b)(2)(C) is potentially in conflict with the participation exemption standards and has removed references to a modification in the hours of participation. Exemption standards are already addressed in Section 42-712 of the

regulations, and requests for exemptions are addressed in Section 42-302.3 of this filing. The regulation has been amended to allow an extension of the 60-month time limit when an individual's participation in welfare-to-work activities is supported through the provision of services such as, mental health counseling and substance abuse treatment.

Section 42-302.114(c)

40) Comment: (NUWCLP)

"Subsection .114(c) – replace "cope" with "work or participate."

Response:

The Department thanks Ms. Usaha for her comments. For an individual with a learning disability, the ability to work or participate is often linked to the person's ability to learn and utilize "coping strategies". However, the Department agrees that a review of any newly developed coping skills should also be linked to an assessment of the person's ability to work and participate. The Department has amended Section 42-302.114(c) to include the impact of any newly acquired coping skills on the individual's ability to work or participate.

41) Comment: (JBLASELC)

"Replace the word "cope" with "accommodate".

Response:

The Department thanks Ms. Berger for her comments. See response to Comment #40, Section 42-302.114(c).

Section 42-302.114(d)

42) Comment: (KACCWRO)

"Section 42-320 requires that the county make a determination of exceptions, but fails to require that the county issue a NOA setting forth such determination. We would propose to add Section 42-302.114(d) to read:

42-302.114(d) The county shall issue a NOA setting forth all the reasons of the determination for granting or denying an exception."

Response:

The Department thanks Mr. Aslanian for his comments. This is adequately addressed by the regulatory language contained in Sections 42-302.31(d) and 42.302.32.

Section 42-302.3

43) Comment: (NUWCLP)

"This section must allow for retroactive requests for periods prior to adoption of the regulations and to allow someone to challenge past periods of exemption when they might not have been required to participate in welfare-to-work activities but still might qualify for an exemption for purposes of the 60-month time limit."

Response:

The Department thanks Ms. Usaha for her comments. A recipient can request an exemption for a period of time established by a notice of action, pursuant to Sections 40-107.141 through 40-107.144 and 40-107.147 through 40-107.149. The recipient may request a hearing for the period of time established in the NOA and therefore request any exemptions that she/he may have been entitled to. However, once the 90 days have passed and no request for hearing was made, then the period of time cannot be reopened.

44) Comment: (KACCWRO)

"This section provides that recipient can ask for an exemption form. We propose that the 402-302.3 be amended to include a sentence that states a copy of that form shall be included in the NOAs that the county is already required to mail to the current recipient pursuant to MPP Section 40-107.142.

Requesting Exemptions/Exceptions

A recipient can request an exemption/exception verbally or in writing. When a recipient states that s/he meets a condition that qualifies as an exemption or exception to the 60-month time limit, as specified in MPP Sections 42-302.21 and 42-302.11, the county shall document the request and provide the recipient with an exemption/exception request. A copy of this form shall be included with the notices that a recipient will receive pursuant to MPP Section 40-107.142."

Response:

The Department thanks Mr. Aslanian for his comments. As provided in Section 40.107.14, counties must inform applicants/recipients of all time limit requirements including the process to claim exemptions. As these recipients will be provided with this information at application, redetermination, and any time a notice of action, establishing time on aid, is sent, this should provide ample opportunity for a recipient to request an exemption at any time.

45) Comment: (JBLASELC)

"The beginning of the sentence should read 'An applicant or recipient...'

Counties have an obligation to refer a CalWORKs recipient for a professional evaluation whenever it or its contractors believe the person has a condition that affects the individual's ability to participate in the WTW program. (See section 42-711.56-.58 and 42-715.) These professionals are to determine if the person can participate. If they conclude that there are significant limitations (see comment to Section 42-302.114(b)(2)(C)) the county should exempt the individual.

This section therefore should be amended to reflect that, in addition to a recipient self-requesting an exemption review, the county has an obligation to exempt the person and discuss with them the option of volunteering.

This section should also include a statement that counties are required to determine whether child support paid reimburses a month of aid, and cross-reference the relevant regulations.

This section should also include the requirement that the counties notify all applicants and recipients, at the time of application and redetermination, orally and in writing and in the county WTW handbook, of the exemption categories and standards, and how to request an exemption."

Response:

The Department thanks Ms. Berger for her comments. In response to testimony, Section 42-302.3 was amended to include "an applicant."

The regulatory requirements for evaluating impairments, assessing domestic abuse issues, and welfare-to-work exemptions have been previously addressed in other sections of existing regulations, Sections 42-711.56 through 42-711.58, 42-715, and 42-712 respectively. Any addition and/or revision of regulatory language governing welfare-to-work exemptions, impairment evaluations, and domestic abuse assessments would more appropriately be addressed in the previously referenced sections of regulations and is beyond the scope of this filing.

In response to testimony, Sections 42-302.21(g)(1)(A) through 42-302.21(g)(1)(G) are adopted which provides the process to exempt months of aid by child support reimbursement and to require counties inform recipients of the specific months that are exempt by child support reimbursement pursuant to Sections 40-107.141 through 40-107.149.

Section 42-302.31

46) Comment: (JBLASELC)

"This section should clarify that recipients can request an exemption for a retroactive period. This is particularly important as, at least prior to the promulgation of these regulations, recipients are not provided much of the information or receive notices as

required by these proposed rules. Also, the section should to allow someone to request a retroactive exemption for any period of time when they might not have been required to participate in welfare-to-work but were not listed as having a situation that qualified for an exemption for purposes of the 60-month limit. These individuals would not have realized that there were separate reasons to make for an exemption, since they were not participating."

Response:

The Department thanks Ms. Berger for her comments. See response to Comment #43, Section 42-302.3.

Section 42-302.31(c)

47) Comment: (JBLASELC)

"Subsection (c) should include a statement that counties are required to determine whether child support paid reimburses a month of aid, and cross-reference the relevant regulations. The form should also provide recipients with information on how to obtain the child support payment information."

Response:

The Department thanks Ms. Berger for her comments. See response to Comment #45, Section 42-302.3.

Section 42-302.21(g)(1)(F) requires that counties inform recipients of the specific months exempt due to child support reimbursement.

Section 42-302.31(d)

48) Comment: (JVCSBHSSA)

"Add wording to clarify that only when an exemption/exception is denied that CWDs will notify the client of the reason. As worded it appears that CWDs will give the reason for approving the exemption/exception.

Recommendation: ...whether the exemption/exception is granted or not and the reason, and the reason for not granting the exemption/exception."

Response:

The Department thanks Ms. Varela for her comments. Section 42-302.31(d) is amended to clarify that the notice include the reason only if the exemption/exception is denied.

Section 42-302.32

49) Comment: (JVCSBHSSA)

"15 calendar days to inform the recipient of the approval/denial of the request for exemption/exception is too little time.

Recommendation: Change from 15 calendar days to 15 working days."

Response:

The Department thanks Ms. Varela for her comments. The Department does not agree with the suggestion to increase the number of days for the county to respond to a recipient's request for an exemption/exception. The Department perceives the 15 calendar days as an acceptable period of time to respond to a recipient, given that Sections 42-302.32(a) and 42-302.32(b) allows counties to exceed the time period under certain circumstances.

50) Comment: (KMNLSLAC)

"Our experience with workers is that they frequently read rules very literally. It is important, therefore, that the rule is clear that delays listed in subparts a and b are not the entire list of reasons that justify delay. To this end, please add "These instances include, but are not limited to:....." You might also add delays in obtaining verification on the part of the county or recipient to this list."

Response:

The Department thanks Ms. Meiss for her comments. The Department chose circumstances that are considered beyond the control of the county. Section 42-302.32 allows counties to exceed the 15 days only under the given circumstances as the Department does not perceive that any other circumstances should prevent a county from responding to the recipient within the 15 days.

51) Comment: (NUWCLP)

"This subsection should be modified to specify, consistent with Goldberg v. Kelly and the due process requirements, that aid cannot be terminated based on time limits while and exemption/exception determination is pending."

Response:

The Department thanks Ms. Usaha for her comments. While no change is being made to Section 42-302.32, Section 40-107.147 is being adopted to require a notice of action to inform a recipient at the 60<sup>th</sup> month on aid. If the recipient requests a hearing at that time to dispute the number of months on aid, including an exemption that was not granted in that period, then aid paid pending may be granted to the recipient.



52) Comment: (JBLASELC)

"Add a subsection that specifies that Aid Paid Pending provisions and due process apply to individuals facing termination of aid based on the time limits. Counties should not terminate aid for these individuals when processing the request for the extension/exemption, and thereafter if the individual timely appeals the denial of such a request."

Response:

The Department thanks Ms. Berger for her comments. See response to Comment #51, Section 42-302.32.

Section 42-302.33

53) Comment: (JBLASELC)

"We appreciate and strongly support the department's inclusion of this section. recipients often experience requests to re-verify information at the county's disposal. This reminder will be of great assistance in appropriately and timely processing requests for time extensions/exemptions."

Response:

The Department thanks Ms. Berger for her comments.

Section 42-302.34(a)

54) Comment: (JBLASELC)

"Subsection (a) should clarify that an individual's failure to turn in verification is not a WTW failure that is subject to sanction. Rather, the county can require the person to participate or temporarily excuse participation for good cause. advocates have reported that counties are sanctioning for failure to verify.

Subsection (a) should mention that the notice should address a partial granting of the exemption request (e.g., the county finds the person exempt for some, but not all, of the time period at issue or for a shorter duration)."

Response:

The Department thanks Ms. Berger for her comments. The regulatory requirements governing welfare-to-work exemption requests and sanctions are addressed in Sections 42-712 and 42-721 of the current regulations. Any addition and/or revision of regulatory

language governing welfare-to-work exemptions and sanctions would more appropriately be addressed in the previously referenced sections of regulations and is beyond the scope of this filing.

Section 42-302.34(b)

55) Comment: (JBLASELC)

"Subsection (b) should explain the steps a county must take if the individual's provider will not complete a verification form, or the individual cannot locate a provider qualified to verify the particular condition who will see the person without charge. Pursuant to regulations, counties are required to assist individuals who cannot obtain verification despite efforts to do so to the best of their ability. Advocates have reported that recipients frequently cannot obtain this verification, through no fault of their own, and the counties do not provide any assistance."

Response:

The Department thanks Ms. Berger for her comments. Section 42-302.33 is amended to add a cross reference to Section 40-107.1 which requires that counties assist the applicant/recipient with obtaining the necessary documentation to establish eligibility for aid.

Section 42-302.34(d)

56) Comment: (JBLASELC)

"Subsection (d) should specify that the notice include information on how request a hearing. We recommend that the state create a mandatory form, instead of asking each of the counties to design their own. There is no reason or need for a county only notice."

Response:

The Department thanks Ms. Berger for her comments. All notices of action and notices providing a determination require that information on how to request a hearing be provided pursuant to Turner v. McMahon. Counties are not authorized to create their own notices when a state required form is provided. The exemption request and determination forms are required forms therefore, no substitutions are permitted.

Section 44-133

57) Comment: (JBLASELC)

"All references in subsections .5 and .81 should remove the reference to excluding consideration of the parent(s)' needs. The legislature is aware of how to specify the exclusion of needs. *See e.g.*, W&I section 11486. They chose not to do so in 11320.15. Welfare and Institutions code section 11320.15 refers to removing the timed-out adult from

the assistance unit, but does not require the exclusion of the needs of the adult. This is accomplished by removing the adult from the maximum aid payment determination.

The instances in 44-133 in which the adult's needs are excluded are either punitive (sanction situations) or when the needs are accounted for in another aid program or AU. Adults who "time out" of CalWORKs already are being punished by being rendered ineligible for aid, including General Assistance, regardless of their ability to support themselves. CDSS should allow the parent to be left with sufficient funds to support him or herself. Timed out adults are likely to be paying for transportation, all or part of the childcare costs, taxes, etc."

Response:

The Department thanks Ms. Berger for her comments. Welfare & Institutions Code Section 11320.15 states that the adult must be "removed" from the assistance unit, and the Department must interpret that statutory directive according to its best understanding of legislative intent. Removing the individual only from the MAP calculation while continuing to consider the person's needs and income would, in effect, provide a benefit to the person the legislature required to be "removed." If the Department were to adopt the approach proposed in the comment, many families would experience no difference in their grant as a result of the adult reaching their time limit. This is not consistent with the clear legislative intent that timed out adults be treated differently before and after the time limit. Moreover, persons who have received aid for their entire lifetime limit are not similarly situated to the limited groups of persons whose income and needs are considered in current regulations, and those regulations have no bearing on the correct interpretation of the time limit statute."

Section 44-133.81

58) Comment: (KMNLSLAC)

"This regulation excludes both the parent and their needs from consideration in the calculation of the children's grant. But the law does not require such a harsh result. It merely requires that the parent should be "removed" for the purposes of the calculation of aid. That can be accomplished by removing them from the assistance unit. It is not necessary to also refuse to allow them to set aside some of their income for their own needs. The legislature could have said the parent would be removed for both purposes – but it did not do so. For the department to adopt such a reading is overly harsh and will hurt many families – especially those who are working.

Response:

The Department thanks Ms. Meiss for her comments. See the response to Comment #57, Section 44-133. The proposed regulation is consistent with both statutory language and legislative intent.

Section 44-133.81

59) Comment: (NUWCLP)

"The exclusion of the timed-out adults' needs from consideration in calculating the grant for the aided AU members should be removed. It is inconceivable that all of their income would be used to support the aided AU members. Welfare and Institutions Code sections 11320.15 removes the timed-out adult from the AU, but does not require the exclusion of the needs of the adult from consideration. This is accomplished by removing the adult from the maximum aid payment determination.

Timed-out adults should be allowed to have sufficient funds set aside to support themselves and to pay for necessary work related expenses such as transportation and childcare."

Response:

The Department thanks Ms. Usaha for her comments. As Ms. Usaha correctly notes, a timed out person must be removed from the MAP calculation. When the person is removed from the MAP calculation, that person's needs are not considered, which is the result achieved by the proposed regulation. As stated more fully in response to the comment on Section 44-133, the proposed regulation is consistent with both the statutory language and legislative intent.

Section 82-833

60) Comment: (JBLASELC)

"As a new section, this sentence does not make sense. It requires a prefatory phrase."

Response:

The Department thanks Ms. Berger for her comments. Ms. Berger's comment refers to an earlier draft. The phrase was amended to become a sentence. No further changes are made at this time.

g) 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. A 15-day renotice comment period was held from November 22, 2002 to December 9, 2002. Written testimony was received from the following individuals in response to the 15-day renotice:

Judy Varela  
County of San Bernardino  
Human Services System Administration

(JVCSBHSSA)

General

1) Comment: (NUWCLP)

"Generally, there should be regulations specifying a process by which timed-out adults who later qualify for exception(s) under section 42-302.11 and timed-out adults for whom child support or overpayment recoupment reimburses months on aid can get back on aid."

Response

The Department thanks Ms. Usaha for her comments. The process for applicants or recipients to request exceptions is provided in Section 42-302.3. Cases with adults, who have reached the 60-month time limit and whose children remain on aid, are continuing cases. Therefore, counties will regularly review these cases to ensure eligibility requirements are met. Current processes require that counties review cases and make appropriate determinations when there is a change in circumstances that would affect a family's eligibility for aid. Further, Section 40-107.148 requires the county to inform a timed-out adult when child support or overpayment recoupment reimburses any month(s) on aid.

Section 40-107.141

2) Comment: (NUWCLP)

"As written, this section provides a notice of action regarding countable and exempt months to only returning applicants who have received aid in California or any other states on or after January 1, 1998. This section should be modified to state that "The applicant shall be informed by notice of action, at the time that eligibility for aid is authorized, if the applicant received aid in California or any other state(s) at any time." Although the description of the 60-month time limit requirements will be provided to all applicants, time limit requirements are complex. Given the amount of information provided to applicants at the time of application and when eligibility is determined, applicants who have received aid before, but not since January 1, 1998, may not realize that they have not utilized any of the 60-month time limit."

Response

The Department thanks Ms. Usaha for her comments. The Department does not agree with the comment that recipients who have not received aid in California or other states on or after January 1, 1998, be notified that no months have accrued toward the CalWORKs 60-month time limit. The county is required to provide to an individual, at the time s/he applies for aid, a description of the 60-month time limit requirements, which includes the provision

that the 60-month time limit applies to both aid received under CalWORKs and under other states' programs funded by the federal TANF Program as of January 1, 1998. A notice of action to inform an individual that zero months have counted toward the time limit is unnecessary. MPP Section 40-107.142 requires the county inform the recipient by notice of action at redetermination, at which point, the months of aid have accrued.

Section 40-107.141(a)

3) Comment: (JVCSBHSSA)

"Child support recoupment is used to untick the individual's time clock beginning with the earliest month of aid. By doing this, counties will always be doing a look back and recalculating the time on aid. San Bernardino County prefers to give the individual a complete history of the time on aid with each time on aid notice of action.

Recommendation: Reword the section as follows: The number of months the individual received aid, if any."

Response:

The Department thanks Ms. Varela for her comments. The Department does not agree with the comment that individuals receive a notice of action with the complete history of the time on aid. The time-on-aid notice of action is intended to report the months of aid that are being counted toward the 60-month time limit since the last notice of action. To include all other months that have previously established would only confuse the recipient and could misdirect the recipient to attempt to duplicate an unsuccessful prior challenge. The time-on-aid notices of action are designed in order for counties to make determinations for a specified period of time. Once 90 days after the issuance of a notice of action have passed, and there is no request for hearing for the period of time reported, then the established period of time cannot be reopened except for cases where child support or overpayment recoupment repay and "untick" previously counted months during the period.

Section 40-107.141(b)

4) Comment: (JVCSBHSSA)

"Child support recoupment is used to untick the individual's time clock beginning with the earliest month of aid. By doing this, counties will always be doing a look back and recalculating the time on aid. San Bernardino County prefers to give the individual a complete history of the time on aid with each time on aid notice of action. Therefore, references to the last notice of action are not needed.

Recommendations: Delete references to the last notice of action. Reword the section as follows: The cumulative number of countable months the individual received aid and the specific exempt months."

Response:

The Department thanks Ms. Varela for her comments. Please see response to Comment #3.

5) Comment: (NUWCLP)

"Subsection (b) should be modified to require the notice to list the total months of exemption, and not just the number of months since the last notice. Since the county welfare departments (CWD) are required to keep records of exempt months, they should be able to provide the total months of exemption to assist recipients in assessing whether there is any discrepancy between the information provided by the CWD and what the recipients remember. If there is any discrepancy, it is imperative that the recipients receive accurate and complete information to challenge the CWD's accounting of months exempt, used, and remaining.

As written, the notice pursuant to this section does not provide specific information about the exemptions. The recipients who receive this notice will not know what exemption(s) applies to which months. Nothing in the regulations pertaining to the notice requirements requires the CWDs to provide this information, except at the determination on the request for exemptions. Subsection D should be added to require the notice to state "the basis of exemption(s) for any month(s) not countable towards the 60-month time limit." Providing specific information regarding the basis of exemption(s) and the months in which the exemption(s) applies will ensure that recipients can verify the accuracy of the CWDs' accounting and to assist the recipients in preparing for the hearing to challenge the CWDs' accounting."

Response:

The Department thanks Ms. Usaha for her comments. As stated in the response to Comment #3, the time-on-aid notice of action is intended to only report the months of aid and the exempt months since the last notice of action. Further, if there is a discrepancy over the number of months and/or the exempt months reported on the notice of action, the recipient can file a hearing to appeal the determination.

The Department does not concur with the comment that the notice of action include information on the basis of the exemption. The determination notice required in Section 42-302.34 provides adequate notification of the exemption and is available to the recipient. In preparation for a hearing, recipients may use the determination notices as well as other documentation to substantiate the counties exemption determinations.

Section 40-107.142

6) Comment: (NUWCLP)

"In our comments submitted on April 17, 2002, we stated that more frequent notice should be provided than at redetermination, the 54th month, and the 58th month of aid. The current draft regulation reduced the frequency of notice further by deleting the 54th and 58th months on aid from section 40-107.142. Although section 40-107.143 requires an

informing notice to be provided at the 54th month, this informing notice is inadequate as discussed below. In addition, as written, the current draft does not require that any notice be given at the 58th month on aid."

Response:

The Department thanks Ms. Usaha for her comments. In response to the testimony received by the counties regarding the increased workload to county workers to make determinations on recipients' time on aid due to the frequency of required notices to the recipient, the Department chose to eliminate the 58<sup>th</sup> month notice of action. However, Section 40-107.144 was adopted to require counties provide one notice of action to each recipient during the period of the recipient's 54<sup>th</sup> through 58<sup>th</sup> countable months on aid. The Department supports this requirement to ensure that recipients are provided with at least one adequate notice prior to reaching the 60<sup>th</sup> month on aid. Further, the section allows counties to choose the most appropriate time to inform recipients, which will therefore assist county workers in providing timely determinations of recipients' time on aid and of the exemptions/exceptions.

Section 40-107.143

7) Comment: (NUWCLP)

In subsection (a), "42-107.141" should be changed to refer to section "40- 107.141."

Response:

The Department thanks Ms. Usaha for her comments. Section 40-107.143(a) has been amended to correctly indicate the cross-reference to section 40-107.141.

Section 40-107.143(b)

8) Comment: (NUWCLP)

"Subsection (b) should be deleted. A notice pursuant to section 40-107.143 should be meet the requirements of section 40-107.141. As written, a notice pursuant to subsection (b) provides only the number of months used and months remaining, and not the number of months exempt. Since at the time of this notice, recipients only have six months remaining on their 60-month time limit, they need the information in their 54th month on aid to verify the accuracy of their time limit information. Given the difficulty of gathering documentation after exempt months have passed, the delay in providing this information makes it much more difficult for the recipients to challenge the CWDs' accounting of the months used, exempt, and remaining on their time limit clock.

In July 2002, Jodie Berger and Nu Usaha raised with the Department their concerns about the informing notice attached to ACIN I-47-02, which would satisfy the notice requirement pursuant to section 40-107.143 as described above. The informing notice does not provide information about how to request a hearing, as is generally provided on notices of action.



The mere statement that recipients who disagree with the county should “contact [the] worker for information on how to ask for a hearing” is not sufficient to meet due process requirements."

Response:

The Department thanks Ms. Usaha for her comments. The Department agrees that the notice pursuant to subsection (b) is not considered a notice of action and therefore does not provide the specificity as do the notices of action that determine a recipient’s time on aid. While the counties have been given the flexibility in meeting the informing requirement at the 54<sup>th</sup> month on aid, counties that choose to send an informing notice to a recipient at the 54<sup>th</sup> month on aid, must still provide a notice of action within six months of the recipient’s termination from aid and at the 60<sup>th</sup> month on aid.

Section 40-107.144

9) Comment: (NUWCLP)

"Subsection (a) should be deleted. As written, there is no requirement for a notice of action to be provided if the last notice of action has been provided at the 54th month on aid since section 40-107.144 requires a notice of action during the period of the recipient’s 54th and 58th months on aid and subsection (a) provides that “A notice of action pursuant to MPP Section 40-107.141, .142, or .143 (a) satisfies this requirement.” Given the harsh effects of reaching the 60-month time limit on CalWORKs families, another notice of action should be provided after the 54th month and before the 60th month on aid. As written, a recipient who receives a notice of action pursuant to section 40-107.143 (a) will not receive another notice until the 60th month, which is immediately before the family grant will be reduced."

Response:

The Department thanks Ms. Usaha for her comments. Please see response to Comment #6.

Section 40-107.145

10) Comment: (NUWCLP)

"Modify this section to state “No notice pursuant to MPP Sections 40-107.141 through .144 need be sent under the following circumstances.” Given the importance of the application of time limits and the harsh effects on CalWORKs families, the CWDs should provide time limit information upon request by recipients at any time, even if the request is made within three months from a previous notice of action."

Response:

The Department thanks Ms. Usaha for her comments. The Department does not agree that counties should be required to provide time on aid information to a recipient within three calendar months from a previous request for time on aid information. Counties are required

to inform applicants/recipients at regular intervals. The additional notification is not necessary until sufficient time has elapsed and therefore, a change in the number of months would be expected. The Department supports this requirement to allow counties sufficient time to gather time limit information and make the determination on the number of months received for the required notices of action.

#### Section 40-107.146

11) Comment: (NUWCLP)

"For our comments on notice requirements under section 40-107.146, please see our comments on section 40-107.141.

This (or some other section) should specify that applicants/ recipients and former recipients must be told in writing, orally, and in the WTW handbook of their right to request a time-limit accounting."

Response:

The Department thanks Ms. Usaha for her comments. Please see response to Comment #5.

In accordance with Section 40-107.14, counties must inform the applicants/recipients in writing and orally, as necessary, of all time limit requirements, at application, redetermination, and any time a notice of action, establishing time on aid, is sent. In response to testimony received, the statewide informing notice, CalWORKs 60-Month Time Limit (CW 2184, 11/02) which is used to inform recipients of the time limit requirements, has been revised to include a statement that the applicant/recipient may contact her/his worker to find out how many months of aid s/he has used.

#### Section 40-107.147

12) Comment: (NUWCLP)

"A subsection should be added to require a statement that if recipients believe they qualify for the exceptions as provided in section 42-302.11, they should request for the exceptions to receive aid beyond the 60-month time limit. The notice should include a statement "If you believe you are entitled to additional months because of an exception, you should request for an exception.

A subsection should be added to require the notice to provide statements that (1) recipients who reach the 60-month time limit remain eligible for other public benefits such as food stamps, Medi-Cal, and housing subsidies, (2) "your children will continue to receive aid and have rights under CalWORKs," and (3) "your county may provide other services when you lose your aid; ask them."

Response:

The Department thanks Ms. Usaha for her comments. Please see response to Comment #11 regarding the requirement for counties to inform the applicant/recipient of all time limit requirements. In response to testimony received, the statewide informing notice, CalWORKs 60-Month Time Limit (CW 2184, 11/02) has been revised to include a statement that if the applicant/recipient has a condition that qualifies as an exemption or extender, s/he may contact her/his worker to request the exemption/extender. The notice also states that the 60-month time limit does not apply to children, child care, Medi-Cal, or Food Stamp benefits.

The Department will consider the necessity for a separate statewide informing notice that specifically addresses the benefits that are available to timed-out recipients.

Section 40-107.148

13) Comment: (NUWCLP)

"Add "The notice shall inform the recipient of the number of extra months of aid to which s/he is entitled because of the child support or overpayment recoupment." The regulation does not specify if these recipients automatically begin receiving aid after months on aid have been reimbursed or if they have to request to get back on aid. This (or some other section) should specify the process by which the timed-out adults who later qualify for exception(s) under section 42-302.11 and timed-out adults for whom child support or overpayment recoupment reimburses months on aid can get back on aid.

One possible interpretation of section 40-107.148 is that only timed-out adults whose children remain on aid will receive a notice of action. Another possible interpretation is that the timed-out adults whose children are not on aid may receive a notice of action under section 40-107.149. We would like to make sure that both the timed-out adults with and without children on aid will receive this notice of action. Thus, section 40-107.148 should be changed to "After the 60- month time limit notice of action, an adult who has reached the CalWORKs 60- month time limit, whether or not his/her children remain on aid, shall be informed by notice of action. . . ."

The reference to section 40-107.142 should be deleted. The notice of action pursuant to this section should be provided more often than at redetermination. The notice of action should be issued whenever child support reimburses months on aid so that the recipients are informed that they have extra months of aid."

Response:

The Department thanks Ms. Usaha for her comments. MPP Section 42-302.21(g) provides the process for reimbursement of months of aid for the child support time limit exemption. A county shall add the adult into the assistance unit when the county is notified of the child support recoupment and it is determined that the adult is eligible for additional months of aid due to the exemption and the family is otherwise eligible.

The Department does not concur with the comment that the timed-out adults with or without aided children receive the same notification for time on aid. Because the circumstances are different, the Department provided for informing requirements for each circumstance: an open active case in which the children continue to receive aid as a safety net case and a closed case, in which the family is no longer aided.

If the timed-out adult cannot be aided beyond 60 months because s/he does not qualify for an exception, it is only when months of aid have been reimbursed by child support or overpayment recoupment that would allow her/him to come back on aid. For an open active case in which the children continue to receive aid, the case must be reviewed annually, therefore the Department supported a provision that would require the county to send a notice of action, informing the recipient of the number of months on aid only at redetermination when child support or overpayment recoupment reimburses any month(s) on aid. However, for a case in which the adult has reached the 60-month time limit and whose children are no longer aided, the county would not be required to send a notification about time on aid unless the adult applies for aid or s/he requests time on aid information, pursuant to sections 40-107.141 and 40-107.146.

#### Section 40-107.149

#### 14) Comment: (NUWCLP)

"It may be helpful to provide examples of when a notice of action will be provided pursuant to section 40-107.149. For example, a notice of action should be provided to a timed-out adult with a child who receives Supplemental Security Income and who is excluded from the assistance unit when the timed-out adult later qualifies for an exception under section 42-302.111. This timed-out adult should also receive a notice of action when child support or overpayment recoupment reimburses months on aid."

#### Response:

The Department thanks Ms. Usaha for her comments. As stated in the above response to Comment #13, it is the Department's intention to require counties provide time on aid information to timed-out adults whose children are no longer aided when these adults apply for aid or request time on aid information.

#### Section 40-107.15

#### 15) Comment: (NUWCLP)

"We remain concerned about confidentiality issues. At a minimum, county should not be allowed to reply orally to another state's request for number of months of receipt.

Add a subsection stating, "Upon a verbal or written request by a former CalWORKs recipient who applies for aid in another state, a notice of action providing information regarding the basis for exemptions and the exempts months shall be provided within 15 days

from the date of receipt of the request.” This notice will assist the recipient who wants to share the exemption information with the new state.”

Response:

The Department thanks Ms. Usaha for her comments. Please see responses to Comment #19 in Section f) and to Comment #5 in Section g).

Section 42-302.114(a)(1)(A)

16) Comment: (NUWCLP)

"Clarify, in subsection (a)(1)(A) that “welfare-to-work participation” means *any* participation, regardless of the duration of the activity, as long as the person did not otherwise fail to participate in WTW assignments during the specified time periods. An example should be provided: “Jane was previously sanctioned. On review, it is confirmed that she was not eligible for any exemptions or time waivers. Jane participates, over the course of 6 months, in a 1-day orientation and a 4-week job search. She was scheduled for an assessment, but had good cause for missing it. Jane did not receive any further assignments during the 6-month period. Jane successfully participated in all her WTW assignments during the requisite period. Jane is considered to be participating and cooperating.”

Add a subsection to clarify that sanctions for non-WTW behavior (immunization and school attendance) are not included in the review of whether the individual has cooperated in WTW."

Response:

The Department thanks Ms. Usaha for her comments.

It appears that the commentor may be referring to Section 42-302.114(a)(2)(A) (emphasis added) instead of (a)(1)(A). The example provided by the commentor refers to a recipient who was previously sanctioned, in which case, Section 42-302.114(a)(2)(A), would apply to the recipient. The Department does not agree with the assertion that “welfare-to-work participation” regardless of duration should be interpreted as “participating and fully cooperating”. Current regulatory language, Section 42-302.114(a)(2)(A) provides for a reasonable time period of two-years within which the recipient can accumulate 6 months of welfare-to-work participation.

The addition of language specifying that sanctions for non WTW behavior are not included in the review of whether an individual has cooperated is unnecessary. Section 42-302.114(a)(1) refers to the absence of instances of noncompliance that resulted in a welfare-to-work financial section.

Section 42-302.114(a)(1)(B)

17) Comment: (NUWCLP)

"We reiterate Jodie Berger's comment that subsection (a)(1)(B) should be added to state that "sanctions that occurred during months for which the county later determines the participant should have been exempted from WTW participation shall not be considered a failure to participate or cooperate." As the county reviews the case of a recipient who has reached the 60-month time limit, the county may discover that the recipient should have been exempt. If this occurs, this information should not be disregarded and should be acted upon to allow the recipient to have met satisfactory participation, attendance, and progress requirements in order to qualify for an exception."

Response:

The Department thanks Ms. Usaha for her comments. The proposed regulatory language would have the effect of "reopening" a previously imposed WTW sanction to an additional review and determination by the county, and an appeal that would be in addition to the good cause/noncompliance/sanction and timely appeal requirements provided in Welfare and Institutions Code Section 11327 and 10951, respectively. Proposed regulations under this filing provides that evidence of an impairment be taken into consideration under Section 42-302.114(a)(2), which provides that a recipient who has been sanctioned may be considered to have a history of participation and full cooperation if the individual has a sustained period of or periods of participation despite the presence of an impairment. Requiring that a recipient accumulate a total of 6 months of WTW participation within a two-year period, during her/his 5 years of aid is a reasonable standard to find an individual to have a history of participation and full cooperation.

Section 42-302.114(a)(2)

18) Comment: (NUWCLP)

"Section 42-302.114 (a)(2) should be reworded to clarify that

1) when a person had a condition(s) that significantly impaired their ability to be regularly employed *or* participate in WTW, the person met an exemption and the month should not be counted,

2) individuals with a documented impairment or combination of impairments, or for whom counties have granted domestic violence time waivers, that resulted in a failure or repeated failure to participate or progress in their welfare-to-work activities meet an exemption, and/or should have had the time waived. If the failure was during a period not covered by the exemption verification/time waiver, the county should give the recipient an

opportunity to verify a retroactive exemption/time waiver. A subsection should be added to clarify that if a person had qualified for an exemption in a particular month(s), the exemption can be retroactively applied and months should be taken off of the person's 60-month time limit clock,

3) the county should inquire whether the condition(s) caused or contributed to the sanction, to determine whether the person should be offered an opportunity to verify an exemption for the period of time during which the individual had a WTW failure. Cross-refer to the regulatory cite (and relevant ACL directives) that counties are to determine whether an impairment caused/contributed to the failure, in which case the person should not have been sanctioned."

Response:

The Department thanks Ms. Usaha for her comments.

1) The addition of regulatory language regarding exemptions and the 60-month time limit are unnecessary. Existing regulations Sections 42-712.44 and 42-712.7, respectively, already specifies that aid received by individual who is exempt from welfare-to-work participation due to a disability that significantly impairs an individual's ability to be regularly employed or participate shall not be considered a month of aid in computing the 60-month time limit.

2) The Department agrees that the county should consider exempting or waiving participation requirements for individuals who repeatedly fail to progress in their welfare-to-work assignment due to an impairment or combination of impairments and/or domestic abuse, and this section was previously modified/removed to eliminate confusion/conflict with existing exemption and waiver provisions. The addition of exemption and/or participation waiver provisions would exceed the scope of Welfare and Institutions Code Section 11454(e) and it would be inappropriate to address this within this section of the regulations.

3) The proposed language goes beyond the scope of this filing. By this filing, the Department has provided the criteria and guidance necessary to allow counties to determine if an individual qualifies for an extension of their 60-month time limit based upon the individual's existing record of participation and current capabilities as provided under Welfare Institutions Code Section 11454(e) (5). The regulatory language proposed by the commentor would have the effect of creating an additional "appeal process" beyond the good cause/noncompliance/sanction and the timely appeal requirements as provided in Welfare and Institutions Code Sections 11327 and 10951, respectively.

Section 42-302.114(b)(1)

19) Comment: (NUWCLP)

"Delete the presumption mandated in 42-302.114(b)(1). The county should perform an assessment of the individual's ability to *maintain* employment. The statute, Welfare and



Institutions Code section 11454(e)(4) clearly is phrased as an individualized review of both the work and participation components.

Replace (b)(1) with instructions that counties are *not* to presume that working or participating in welfare-to-work at the time the individual hits the time limit means that they are capable of maintaining work or participating. Counties must make an individualized determination of the person's history of work and participation, and ascertain if *despite current work/participation*, the individual has a history of having problems obtaining or maintaining work *and/or* participating.

Add a provision to provide guidance of what the above means. The guidance should be phrased as "including, but not limited to." It should list: history of losing jobs (layoffs, inability to perform work satisfactorily, etc.), insufficient work opportunities or range of welfare-to-work activities for individuals with impairments, low educational attainment, and/or limited English proficiency, and other significant barriers to work or participation."

Response:

The Department thanks Ms. Usaha for her comments. The regulations provide for an assessment of the individual's current ability to work or participate in welfare-to-work activities. If, at a later time, the individual's condition or ability to function should deteriorate, the individual may then be considered for an exception/extension of the 60-month time limit. Given the ability to consider changes to an individual's condition, it is unnecessary to require the county to project whether an individual will continue to maintain her/his current employment or participation. In addition, an individual who has a history of being terminated from employment or failing to maintain participation and/or progress in her/his welfare-to-work activities due to an impairment would, in all likelihood, be considered exempt or have been exempted from welfare-to-work participation for periods of time.

Section 42-302.114(b)(2)(A)

20) Comment: (NUWCLP)

"Delete subsection 42-302.114(b)(2)(A), and, here or elsewhere, clarify that a person with an impairment or combination of impairments that is of such severity that the individual is incapable of successfully maintaining employment or participation in welfare-to-work activities for 20 or more hours per week meets the exemption criteria. A person limited to 20 hours or less a week is receiving less than 2/3 of the anticipated CalWORKs services. This is a significant limitation."

Response:

The Department thanks Ms. Usaha for her comments. The proposed language goes beyond the scope of this filing. By this filing, the Department has provided the criteria and guidance necessary to allow counties to determine if an individual qualifies for an extension of their 60-month time limit based upon the individual's existing record of participation and



current capabilities as provided under Welfare Institutions Code Section 11454(e) (5). The addition of exemption provisions would exceed the scope of Welfare and Institutions Code Section 11454(e) and it would be inappropriate to address exemptions, which are already addressed in Section 42-712, within this section of the regulations.  
Section 42-302.114(b)(2)(B)

21) Comment: (NUWCLP)

"Clarify subsection 42-302.114(b)(2)(B) regarding "significant modification of the individual's welfare-to-work activities" by adding that if the person participated in WTW activities, but 15% or more of the time was attributable to treatment, counseling, and/or adaptive services (such as special tutorials, techniques for accommodating disabilities, etc.), that the person qualified for an exemption. A significant modification of the individual's welfare-to-work activities, unless for conditions expected to be less than 30 days, is a significant limitation on the individual's ability to access and benefit from WTW activities, and qualifies as an exemption. The American with Disabilities Act provides meaningful opportunity to access and benefit to individuals with disabilities. Add language that instructs counties regarding disability as a basis for an exemption, as well as meeting the exception criteria when recipients have one or more months in which their hours of participation were modified for good cause (conditions anticipated to last less than 30 days)."

Response:

The Department thanks Ms. Usaha for her comments. The proposed language goes beyond the scope of this filing. By this filing, the Department has provided the criteria and guidance necessary to allow counties to determine if an individual qualifies for an extension of their 60-month time limit based upon the individual's existing record of participation and the modifications that are needed to enable the individual to work or participate in welfare-to-work activities. The addition of exemption provisions would exceed the scope of Welfare and Institutions Code Section 11454(e) and it would be inappropriate to address exemptions within this section of the regulations.

In addition, Welfare and Institutions Code Section 11322.6 specifies that welfare-to-work activities shall include mental health, substance abuse, and domestic violence services. This section of the regulations directs counties to consider participation in welfare-to-work activities, such as mental health and substance abuse treatment as modification of an individual's welfare-to-work participation for purposes of determining whether an individual qualifies for an exception/extension of the 60-month time limit.  
Section 42-302.114(b)(2)(C)

22) Comment: (NUWCLP)

"Section 42-302.114 (b)(2)(C) should include a subsection that instructs counties to consult with EDD and the Department of Rehabilitation (DR) to assist in making this determination.

Add a section that provides an exemption for people who meet DR criteria for service, but were not referred to DR or DR was unable to provide services (because of order or priority or wait lists, etc.)."

Response:

The Department thanks Ms. Usaha for her comments. Section 42-780, specifies the contents of County Plans for CalWORKs, which includes a requirement that the county describe how it will partner with employers and employer associations and how they will identify jobs for recipients, and other means the county will use to identify local labor market needs.

MPP Section 42-712.44 already provides a process for clients to request an exemption. although many, if not most, individuals that meet the criteria for Department of Rehabilitation services would qualify for a CalWORKs welfare-to-work exemption, an exemption may not be appropriate in all cases. For instance, an individual who suffers an injury and is unable to continue in the usual occupation, which requires heavy physical labor, may qualify for vocational rehabilitation services and be able to participate in CalWORKs training and/or education activities that do not require heavy physical labor.

Section 42-302.21(g)(1)

23) Comment: (NUWCLP)

"Subsection (1) should be clarified that child support collected from January 1998 forward (as stated in All County Letter 02-74), even if the payments are for support owed before January 1998, shall be used to reimburse aid.

Response:

The Department thanks Ms. Usaha for her comments. The Department believes that the regulation section does instruct the counties to apply all child support collected from January 1998 forward to repay aid beginning with the earliest unreimbursed month of aid, on or after January 1998.

Section 42-302.21(g)(1)(A)

24) Comment: (NUWCLP)

"It will be very difficult and cumbersome to forward information regarding child support recoupment to counties where the individual received aid and no way of ensuring the money was applied to the individual's clock.

Example: Individual received aid in Los Angeles County 1/98 through 12/98, in Orange County 3/99 through 1/00 and San Bernardino County 2/00 to current month. As the earliest month of aid is 1/98 in Los Angeles County, San Bernardino would need to forward the child support recoupment information to Los Angeles County. Los Angeles County would need to apply the child support to aid received. If there were a balance, Los Angeles would have to give the

balance to San Bernardino, who in turn would send the information on to Orange County, the second county in which the individual received assistance.

Recommendation: Each county should be responsible for untick the clock with the child support recoupment they received. This will give each county control over the child support recoupment and ensure that money is applied correctly and timely, which will benefit the client.

Reword the section as follows: The cumulative child support recoupment will be applied to each month of aid beginning with the earliest unreimbursed month of aid, by the county which aid was received and child support was collected, beginning on or after January 1998, and moving forward as each month of aid is fully reimbursed."

Response:

The Department thanks Ms. Varela for her comments. The Department does not agree with the suggestion to only use the child support collected in a county to apply to months of aid received in that county, as this process does not provide a procedure to account for any remaining child support recoupment. The policy set forth in regulations provides a complete application of all child support collected to reimburse months of aid as the statute requires. The process, as provided in state regulations, requires that the counties, where aid was previously received, shall provide monthly grant amount information to the current county. The current county will then obtain the total amount of child support recoupment to apply to the grant amounts and will contact the appropriate counties to inform them of the months of aid that have been exempt due to child support. Any remaining amount of child support recoupment shall be retained by the current county.

Section 42-302.21(g)(1)(C)

25) Comment: (JVCSBHSSA)

"The section should clarify the time limit of the aided caretaker relative.

Recommendation: Reword the section as follows: ...CalWORKs 60-month time limit of parents, aided stepparents, and/or aided caretaker relatives..."

Response:

The Department thanks Ms. Varela for her comments. Section 42-302.21(g)(1)(C) has been amended to add the word "aided."

Section 42-302.21(g)(1)(G)

26) Comment: (NUWCLP)

"A subsection should be added to subsection (1)(G) to require that information regarding the balance of the child support recoupment and the number of months exempt due to the child support recoupment be promptly provided to any subsequent county(ies) pursuant to the

requirements of intercounty transfer. A cross reference to section 40-190.2 regarding intercounty transfer should be made."

Response:

The Department thanks Ms. Usaha for her comments. The Department will consider the necessity for clarification on the time limit information, including the specific forms and notices of action that a county must be required to provide to subsequent counties. This will not be addressed in this regulation package, but may be considered for future regulatory action.

Section 42-302.3(b)

27) Comment: (NUWCLP)

"Subsection (b) should be clarified that a recipient is not required to request, either verbally or in writing, for exemptions/ exceptions on the basis of age 60 years or older, aid reimbursed by child support or overpayment recoupment, grant amounts less than \$10, and receiving only supportive services. The county has the information necessary for it to apply the exemption/ exception to the recipient."

Response:

The Department thanks Ms. Usaha for her comments. The Department has provided a regulation to allow the county to grant an exemption/exception when all required information to make a determination on the request is available to the county. In addition, the statewide exemption request form, CalWORKs and Welfare to Work Exemption Request Form, (CW 2186A, 4/02), informs the recipient that s/he need not request exemptions for age 60 years or older, only receiving supportive services, grant amounts less than \$10 and aid reimbursed by child support.

Section 42-302.31(c)

28) Comment: (NUWCLP)

"Subsection 42-302.31 (c) should be modify to include a statement of exemption/ exception from time limit that do not require *any* request."

Response:

The Department thanks Ms. Usaha for her comments. Please see response to Comment #27.

Section 44-133

29) Comment: (NUWCLP)

"We reiterate that Welfare and Institutions Code section 11320.15 requires only the removal of the timed-out adult from the assistance unit, but not the exclusion of the needs of the timed-out adult from consideration in calculating the grant for the aided assistance unit members. Since post-employment services and services for the timed-out adults are optional and many counties may opt not to provide services during the present budget crisis, it is imperative that the timed-out adults be allowed to have sufficient funds set aside to support themselves and to pay for necessary work-related expenses such as transportation."

Response:

The Department thanks Ms. Usaha for her comments. Please see response to Comment #57 in Section f).